

EXHIBIT PP

STEPHEN G. BURNS
NUCLEAR DEVELOPMENT vs TENNESSEE VALLEY AUTHORITY

August 19, 2020

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<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF ALABAMA</p> <p>3 NORTHEASTERN DIVISION</p> <p>4</p> <p>5 NUCLEAR DEVELOPMENT, LLC, </p> <p>6 Plaintiff, </p> <p>7 -vs- CIVIL ACTION CASE NUMBER</p> <p>8 TENNESSEE VALLEY AUTHORITY 5:18-cv-01983-LCB</p> <p>9 Defendant </p> <p>10 _____ _____</p> <p>11</p> <p>12</p> <p>13 Zoom Deposition of Stephen G. Burns</p> <p>14 Baltimore, MD</p> <p>15 Wednesday August 19, 2020</p> <p>16 10:00 a.m.</p> <p>17</p> <p>18 Job No: J5882449</p> <p>19 Pages: 1-349</p> <p>20 Reported by: Kenneth Norris</p> <p>21</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES:</p> <p>2 ON BEHALF OF THE PLAINTIFF:</p> <p>3 CAINE O'REAR III, ESQUIRE and</p> <p>4 LARRY D. BLUST, ESQUIRE</p> <p>5 (Appearing via Zoom Hookup)</p> <p>6 Hand Arundall Harrison Sale LLC</p> <p>7 P.O. Box 123</p> <p>8 Mobile, AL 36601</p> <p>9 Telephone(251)432-5511</p> <p>10 E-mail: corear@handfirm.com</p> <p>11</p> <p>12</p> <p>13 ON BEHALF OF THE DEFENDANT:</p> <p>14 MATTHEW H. LEMBKE, ESQUIRE</p> <p>15 (Appearing via Zoom Hookup)</p> <p>16 Bradley, Arant, Boulton, Cummings LLP</p> <p>17 1819 5th Avenue North</p> <p>18 Birmingham, AL 35203</p> <p>19 Telephone(817)870-1717</p> <p>20 E-mail: dlunningham@watsoncaraway.com</p> <p>21</p>
<p style="text-align: right;">Page 2</p> <p>1 Deposition of Stephen G. Burns</p> <p>2 Taken via Zoom</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 Pursuant to Notice, before Kenneth Norris, a</p> <p>11 Professional Reporter and Notary Public in and for the</p> <p>12 State of Maryland.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p>	<p style="text-align: right;">Page 4</p> <p>1 ON BEHALF OF THE DEFENDANT, TENNESSEE VALLEY</p> <p>2 AUTHORITY:</p> <p>3 STEVEN C. CHIN, ESQUIRE</p> <p>4 (Appearing via Zoom Hookup)</p> <p>5 Office of the General Counsel</p> <p>6 Tennessee Valley Authority</p> <p>7 400 West Summit Hill Drive, WT6</p> <p>8 Knoxville, Tennessee 37902</p> <p>9 Telephone(817)870-1717</p> <p>10 E-mail: scchin@tva.gov</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p>

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<p style="text-align: right;">Page 9</p> <p>1 A. My name's Stephen Gilbert Burns.</p> <p>2 Q. And where are you located right now?</p> <p>3 A. I'm in my home at -- or apartment at 3016</p> <p>4 Tilden Street Northwest, Washington, D.C., 20008.</p> <p>5 Q. Is that your permanent residence?</p> <p>6 A. It is.</p> <p>7 Q. Do you have any other residences?</p> <p>8 A. No.</p> <p>9 Q. What was your address when you worked with</p> <p>10 the NRC?</p> <p>11 A. Well, my address when I was a commissioner</p> <p>12 was this address. Although I bought this apartment in</p> <p>13 late 2000- -- or late 2014. And for about</p> <p>14 three months I was living with some friends in the</p> <p>15 area. But when I was at the NRC as an attorney and</p> <p>16 when I retired in 2012, I had been at my residence in</p> <p>17 Silver Spring, Maryland from about 1988 through</p> <p>18 2012 -- through 2012. Excuse me.</p> <p>19 Q. Okay. Well, my question really was</p> <p>20 intended -- what was your business address when you</p> <p>21 were at the NRC?</p>	<p style="text-align: right;">Page 11</p> <p>1 It's probably about 35 years since I took a</p> <p>2 deposition.</p> <p>3 Q. Okay. But you're familiar with the rules of</p> <p>4 a deposition, how they proceed?</p> <p>5 A. Generally yes, I would say so.</p> <p>6 Q. Do you have any questions for me before we</p> <p>7 begin your examination?</p> <p>8 MR. LEMBKE: Object. I mean, that's a vague</p> <p>9 question.</p> <p>10 BY MR. O'REAR:</p> <p>11 Q. Okay. Did you -- that's fine.</p> <p>12 Let's talk about your experience at the NRC</p> <p>13 briefly.</p> <p>14 I note you received your law degree in 1978</p> <p>15 and then you went to work right out of law school for</p> <p>16 the NRC. Is that correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And in looking at Exhibit 199 -- do you have</p> <p>19 that before you?</p> <p>20 A. Yes.</p> <p>21 Q. Is that your report that you presented in</p>
<p style="text-align: right;">Page 10</p> <p>1 A. Well, my business address would have been at</p> <p>2 the NRC headquarters which is 11555 Rockville Pike,</p> <p>3 Rockville, Maryland. And I'm a little uncertain of</p> <p>4 the zip code. I think it's 20852.</p> <p>5 Q. But did you have an office there for the</p> <p>6 entire time you were with the NRC?</p> <p>7 A. Yes. From -- basically from 1988 on.</p> <p>8 Before then, the NRC -- when I first started working</p> <p>9 for the NRC, the agency was spread out over about 12</p> <p>10 buildings. I was working in a building in Bethesda,</p> <p>11 Maryland.</p> <p>12 And then when I worked for -- was an</p> <p>13 assistant to one of the commissioners in the late</p> <p>14 '80s, I worked from the commission -- the commission's</p> <p>15 headquarters which was at 1717 H Street Northwest.</p> <p>16 Q. Okay. Thank you. Have you ever given a</p> <p>17 deposition?</p> <p>18 A. I think so, but it's been about 25 or</p> <p>19 30 years.</p> <p>20 Q. Have you ever taken a deposition?</p> <p>21 A. Yes. And that's been longer ago than that.</p>	<p style="text-align: right;">Page 12</p> <p>1 this case?</p> <p>2 A. Yes, it is.</p> <p>3 Q. And do Paragraphs 2, three, four and five</p> <p>4 describe your experience at the NRC?</p> <p>5 A. Yes, at the NRC. But I -- yes, yes, yes. I</p> <p>6 think it also talks about my experience at the</p> <p>7 Organization For Economic Development and Cooperation,</p> <p>8 a nuclear energy agency in Paris.</p> <p>9 Q. All right. Generally it looks like you had</p> <p>10 various positions at the NRC from 1978 through 1994.</p> <p>11 And that in 1994, you became associate general</p> <p>12 counsel. Is that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Did you have any particular area of</p> <p>15 responsibility when you were associate general</p> <p>16 counsel?</p> <p>17 A. Yes. Basically I was responsible for the</p> <p>18 legal staff who provided advice and representation to</p> <p>19 staff supporting the technical offices, the Office of</p> <p>20 Nuclear Reactor Regulation, Nuclear Materials Safety</p> <p>21 and Safeguards as well as the personnel in contracting</p>

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<p style="text-align: right;">Page 13</p> <p>1 matters, so the administrative side.</p> <p>2 Q. Okay. So are you limiting your answer --</p> <p>3 was it all administrative or are you saying it was</p> <p>4 both?</p> <p>5 A. No, it was both.</p> <p>6 Q. So it would be the staff and administrative?</p> <p>7 A. Staff and administration.</p> <p>8 That -- hence the title. You can see it in</p> <p>9 the title of associate general counsel for hearings</p> <p>10 and enforcement and administration.</p> <p>11 Q. Then you became deputy general counsel in</p> <p>12 1998?</p> <p>13 A. Correct.</p> <p>14 Q. Served in that position until March of 2009.</p> <p>15 Is that correct?</p> <p>16 A. March. It may have been April 2009, into</p> <p>17 April.</p> <p>18 Q. What was your area of responsibility as</p> <p>19 deputy general counsel?</p> <p>20 A. As deputy general counsel I was the --</p> <p>21 basically the chief advisor to the executive director</p>	<p style="text-align: right;">Page 15</p> <p>1 his name offhand.</p> <p>2 And then there were others; Luis Ruez and</p> <p>3 Bill Borchard and -- yeah, I think Bill Borchard was</p> <p>4 still with EDO when I left in 2012, or when I was</p> <p>5 deputy -- up through my deputy service.</p> <p>6 Q. Then you served as general counsel from</p> <p>7 2009 -- April 2009 to April 2012?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. Were you appointed as general</p> <p>10 counsel? How did that occur?</p> <p>11 A. Yes. The commission has the responsibility</p> <p>12 for appointing the general counsel. So it's</p> <p>13 basically, it's a vote of the commissioners. You're</p> <p>14 nominated by the chairman and then a majority has to</p> <p>15 approve you in that position. It's one of several</p> <p>16 positions within the Agency that require that kind of</p> <p>17 appointment.</p> <p>18 Q. And when you were appointed, was it for a</p> <p>19 specific term or was it an indefinite term?</p> <p>20 A. No, it was indefinite.</p> <p>21 Q. And then you left. Why did you leave in</p>
<p style="text-align: right;">Page 14</p> <p>1 for operations at the NRC, who is the senior staff</p> <p>2 person who has -- he's like the chief operating</p> <p>3 officer at the NRC. He was responsible for almost all</p> <p>4 of the -- all of the technical offices as well as</p> <p>5 personnel, administration, things like that. So I was</p> <p>6 his chief legal advisor providing legal support.</p> <p>7 I also -- and because of the need to</p> <p>8 maintain separation of functions within the Agency on</p> <p>9 adjudicatory matters, I was basically the senior</p> <p>10 counsel who oversaw the staff, the legal staff who</p> <p>11 represented the technical offices in NRC</p> <p>12 adjudications.</p> <p>13 We had to do that because the general</p> <p>14 counsel would be the advisor to the Commission which</p> <p>15 often would sit in an adjudicatory role.</p> <p>16 Q. And who was the executive director of</p> <p>17 operations when you were deputy general counsel?</p> <p>18 A. When I was deputy general counsel, there</p> <p>19 were several -- several -- I think there was Joseph</p> <p>20 Talon and it was followed by -- I'm losing it. It's</p> <p>21 Bill -- he wound up over at the UAE. I can't remember</p>	<p style="text-align: right;">Page 16</p> <p>1 April of 2012?</p> <p>2 A. I left to take the position at the OCD, the</p> <p>3 nuclear reactor agency in Paris. A friend of mine who</p> <p>4 was the deputy director general there had encouraged</p> <p>5 me to apply. I had done some work with them. It</p> <p>6 sounded like an interesting opportunity, so I decided</p> <p>7 to apply. I was offered the position. And so I</p> <p>8 retired from federal service at that time and I left.</p> <p>9 Q. And so you made the Paris stand. Is that</p> <p>10 right?</p> <p>11 A. That's correct.</p> <p>12 Q. All right. And that was a political</p> <p>13 appointment, is that correct?</p> <p>14 A. No, that's not a political appointment.</p> <p>15 Q. Then how were you selected for that</p> <p>16 position?</p> <p>17 A. As the head of legal affairs in Paris?</p> <p>18 Q. Yes.</p> <p>19 A. Okay. I was -- I applied for the position.</p> <p>20 So I submitted an application into the OECD. I was</p> <p>21 interviewed for it and then I was selected by -- you</p>

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<p style="text-align: right;">Page 17</p> <p>1 go through an interview process. Then I think I was</p> <p>2 selected by the director general or deputy director</p> <p>3 general.</p> <p>4 Q. And then you became a commissioner on</p> <p>5 November the 5th, 2014?</p> <p>6 A. That's correct.</p> <p>7 Q. And that is a political appointment,</p> <p>8 correct?</p> <p>9 A. Political appointment. You're nominated by</p> <p>10 the president and must be confirmed by the center.</p> <p>11 Q. You were nominated by President Obama?</p> <p>12 A. That's correct.</p> <p>13 Q. Okay. You served as commissioner through</p> <p>14 April 30th, 2019, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Is the full term a five-year term?</p> <p>17 A. The full term is a five-year term, but -- so</p> <p>18 my term would have gone through June 2019. However,</p> <p>19 depending on the appointment process, you may never --</p> <p>20 many commissioners do not serve a five-year term.</p> <p>21 For example, the term I went into had</p>	<p style="text-align: right;">Page 19</p> <p>1 A. That is correct.</p> <p>2 Q. And then what was the reason for her leaving</p> <p>3 the chairmanship at that time?</p> <p>4 A. She ended her service as a commissioner.</p> <p>5 She had taken a full time position on the faculty of</p> <p>6 one of the schools at the George Washington</p> <p>7 University.</p> <p>8 Q. And you served as chairman until January of</p> <p>9 2017, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And who became chairman after you?</p> <p>12 A. Christine Svinicki. I can spell it.</p> <p>13 Q. Spell it for the court reporter.</p> <p>14 A. It's S-V-I-N-I-C-K-I.</p> <p>15 Q. And was she chairman at the time you left</p> <p>16 the Commission?</p> <p>17 A. Yes, and she still is the chairman.</p> <p>18 Q. What were you engaged to be an expert</p> <p>19 witness in this case?</p> <p>20 A. It would have been in March of this year.</p> <p>21 Q. Okay. So that would be approximately</p>
<p style="text-align: right;">Page 18</p> <p>1 started running in July of 2014. But I wasn't</p> <p>2 confirmed until -- I wasn't even nominated until late</p> <p>3 July 2014, and then I was confirmed sometime in</p> <p>4 September, in mid-September. And then I worked out</p> <p>5 when I would start service because I had to wrap</p> <p>6 things up in Paris in my old position.</p> <p>7 Q. So the term was for a place and not</p> <p>8 necessarily for an individual. Is that correct?</p> <p>9 A. That's correct. That's correct.</p> <p>10 Q. Who was chairman of the Commission when you</p> <p>11 were appointed commissioner?</p> <p>12 A. Allison Macfarlane.</p> <p>13 Q. And was she chairman the entire time before</p> <p>14 you became chairman?</p> <p>15 A. I'm not sure I understand. From what -- I</p> <p>16 need to understand the point in time.</p> <p>17 Q. Okay. You became chairman at January of</p> <p>18 2015?</p> <p>19 A. Correct.</p> <p>20 Q. Between November 2014 and January 2015, she</p> <p>21 was the chairman. Is that correct?</p>	<p style="text-align: right;">Page 20</p> <p>1 10 months after you left the NRC?</p> <p>2 A. Yes. That's about right.</p> <p>3 Q. Are you a member of any bar association?</p> <p>4 A. I'm a member of the District of Columbia</p> <p>5 Bar.</p> <p>6 Q. Are you a member of any other bar, of any</p> <p>7 Court?</p> <p>8 A. I was admitted to the D.C. Circuit Court of</p> <p>9 Appeals and the D.C. Court Of Appeals but I've never</p> <p>10 appeared before either of them.</p> <p>11 Oh, I see -- correct that.</p> <p>12 My name's been on briefs in front of the</p> <p>13 D.C. circuit as general counsel.</p> <p>14 Q. But you're currently a member of the D.C.</p> <p>15 bar. Is that correct?</p> <p>16 A. I'm an active member of the D.C. bar.</p> <p>17 Q. And are you licensed to practice law in</p> <p>18 Alabama?</p> <p>19 A. No, I am not.</p> <p>20 Q. Have you ever served as an expert witness in</p> <p>21 other cases?</p>

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<p style="text-align: right;">Page 21</p> <p>1 A. No, I have not.</p> <p>2 Q. And when I say case, either judicial or</p> <p>3 administrative?</p> <p>4 A. No, I have not.</p> <p>5 Q. While you were at the NRC, did you ever</p> <p>6 personally work on any construction permit transfer</p> <p>7 application?</p> <p>8 A. I don't have a particular recollection of</p> <p>9 working on a construction permit transfer application.</p> <p>10 I did work on issues related to construction permits</p> <p>11 and enforcement matters related to the oversight of</p> <p>12 construction.</p> <p>13 Q. When you were at the NRC, did you ever</p> <p>14 personally work on any operating license transfer</p> <p>15 applications?</p> <p>16 A. Yes, I did work on some of those.</p> <p>17 Q. Tell us about those.</p> <p>18 A. Some of those involved a -- well, some of</p> <p>19 them were what I would call more usual transfers and</p> <p>20 the others arose out of bankruptcy proceedings. I can</p> <p>21 recall, for example, bankruptcy proceedings involving,</p>	<p style="text-align: right;">Page 23</p> <p>1 because many of them would have been.</p> <p>2 Q. Okay. Do you recall any at this point?</p> <p>3 A. I don't have a particular recollection of</p> <p>4 particular cases because this would have been some</p> <p>5 time ago.</p> <p>6 Q. Can you tell us what the duties of the</p> <p>7 commissioners of the NRC are?</p> <p>8 A. The basic duties of the commissioner are,</p> <p>9 you can encapsulate them in three concepts; policy</p> <p>10 making, rule making and adjudication. Those are the</p> <p>11 basic responsibilities in terms of the those types of</p> <p>12 matters that would come up to the Commission.</p> <p>13 The other thing would be in some areas with</p> <p>14 respect to administration. As I noted before in my</p> <p>15 appointment as general counsel, that is a duty or a</p> <p>16 power of the commissioners, to appoint certain</p> <p>17 officials.</p> <p>18 That's the duties of the commissioner.</p> <p>19 Q. Now, with respect to all three of the</p> <p>20 duties; you said policy formation, rule making and</p> <p>21 adjudications. Could each of those include issues</p>
<p style="text-align: right;">Page 22</p> <p>1 for example, small cooperatives who had gone into</p> <p>2 reorganization, and because they might be either</p> <p>3 leaving the licensure or the licensing framework over</p> <p>4 which they were controlled or because they were</p> <p>5 reorganized into a new entity, that would require NRC</p> <p>6 review and approval.</p> <p>7 Q. Did you work on any operational license</p> <p>8 transfer applications involving a transfer from one</p> <p>9 entity to another pursuant to the negotiated contract?</p> <p>10 A. I don't -- I don't know. Because usually</p> <p>11 when we are reviewing the transfer, we're not so much</p> <p>12 looking at the underlying contract. We're looking</p> <p>13 at --</p> <p>14 Q. Are you aware of one that involved an</p> <p>15 underlying contract whether you looked at it or not?</p> <p>16 A. I'm sorry. Repeat.</p> <p>17 Q. Were you involved in any such transaction</p> <p>18 involving an operational licence transfer pursuant to</p> <p>19 a negotiated contract between the parties whether you</p> <p>20 looked at the contract or not?</p> <p>21 A. Well, I think that the answer would be yes</p>	<p style="text-align: right;">Page 24</p> <p>1 involving licensing?</p> <p>2 A. Yes. And that -- that's what -- in a sense</p> <p>3 that's what an adjudication encapsulates. So yes,</p> <p>4 commissioners do have responsibility for licensing but</p> <p>5 that is generally at a high level, it's not day to day</p> <p>6 administration of a licensing -- requests or transfer</p> <p>7 request or things like that.</p> <p>8 Q. Describe the adjudication process -- the</p> <p>9 administrative adjudication process within the NRC.</p> <p>10 A. Under the Atomic Energy Act, basically in</p> <p>11 Section 189, it describes those actions of the</p> <p>12 Commission which are subject to a potential hearing,</p> <p>13 and that basically licensing and whether that's for</p> <p>14 nuclear reactors or materials, radioactive --</p> <p>15 materials licensees or users of radioactive material.</p> <p>16 In some instances, for example, in the</p> <p>17 initial issuance of a construction permit or a</p> <p>18 combined -- under the newer process, a combined</p> <p>19 license, the statute requires a hearing. In fact in</p> <p>20 those circumstances, the Commission itself in recent</p> <p>21 years has held that man -- so called mandatory</p>

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<p style="text-align: right;">Page 25</p> <p>1 hearing.</p> <p>2 But otherwise what you have is a process</p> <p>3 which the NRC will issue a notice of certain licensing</p> <p>4 actions, it will invite potential hearings or request</p> <p>5 for a hearing and in a licensing matter, typically</p> <p>6 that's going to be what we call an intervener or</p> <p>7 public interest group. It might be a State or a local</p> <p>8 government who have issues that they want to have</p> <p>9 heard at that -- in that proceeding.</p> <p>10 The Commission -- in the adjudicatory</p> <p>11 process you also have enforcement actions and certain</p> <p>12 enforcement actions, particularly civil penalties and</p> <p>13 orders carry with it an opportunity for hearing. And</p> <p>14 most of -- enforcement hearings in that -- in those</p> <p>15 circumstances would be one where the hearing has been</p> <p>16 requested by a licensee who's subject to the order,</p> <p>17 who objects to the order, objects to the sanction.</p> <p>18 Q. Now, are these hearings before the</p> <p>19 Commission?</p> <p>20 A. Not all of them. Most of it -- the</p> <p>21 Commission has -- the Atomic Safety and Licensing</p>	<p style="text-align: right;">Page 27</p> <p>1 to the -- actually the late 1950s and it was modified</p> <p>2 around 1962 -- is that the statute requires the Agency</p> <p>3 to hold a hearing. It doesn't say what it needs to</p> <p>4 be.</p> <p>5 Now, in practice what has happened with the</p> <p>6 mandatory hearing processes is that the Agency has</p> <p>7 focused on certain aspects of the application that</p> <p>8 might be interesting. For example, I can think of --</p> <p>9 I think maybe it was with one of the Vogtles or the</p> <p>10 Summer plant where -- which were using the AP 1000</p> <p>11 design.</p> <p>12 The AP 1000 design, the baseline design is I</p> <p>13 think for a less seismically active area than the</p> <p>14 areas where Vogtle and Summer were located. So I</p> <p>15 think one of the issues -- if I recall one of the</p> <p>16 issues was decided it would be interesting to hear at</p> <p>17 the so called mandatory hearing, would be how the</p> <p>18 seismicity parameters were adjusted to adapt to the</p> <p>19 standard design of the AP 1000.</p> <p>20 But again, the issues can be -- they can be</p> <p>21 offered up by the staff or I think even the applicant</p>
<p style="text-align: right;">Page 26</p> <p>1 Board, which is a panel of judges -- administrative</p> <p>2 judges that are within the Agency. It's combined of</p> <p>3 both lawyers and technical people, and they're the</p> <p>4 ones for the most part who carry out in effect the</p> <p>5 trial level hearing.</p> <p>6 The Commission is in effect the appellate</p> <p>7 body within the Agency and so may hear appeals from --</p> <p>8 from decisions of the board by the various parties.</p> <p>9 As I said, though, perhaps the one exception</p> <p>10 to referring those hearing requests to a license or a</p> <p>11 hearing originating before the licensing board is with</p> <p>12 respect to the so called mandatory hearing required</p> <p>13 with -- under either a construction permit or under</p> <p>14 the combined license, under 10 CFR 50.2.</p> <p>15 Q. And what hearings are mandatory regarding</p> <p>16 construction permits?</p> <p>17 A. Could you repeat that?</p> <p>18 Q. Yes. What are the issues that require a</p> <p>19 hearing on a construction permit?</p> <p>20 A. There's no specific set of issues that's</p> <p>21 required. The statute -- and this goes back -- back</p>	<p style="text-align: right;">Page 28</p> <p>1 can know the process. And again, this is in effect a</p> <p>2 non-contested type hearing but it's required to be</p> <p>3 done under the staff.</p> <p>4 Q. Were there any hearings regarding</p> <p>5 construction permits at Bellefonte?</p> <p>6 A. Yes, there were as I recall from looking at</p> <p>7 the history of the plant.</p> <p>8 Q. Were you involved in any of those?</p> <p>9 A. No, that was before I came to the NRC.</p> <p>10 Q. So that was before 1978?</p> <p>11 A. Correct.</p> <p>12 Q. That was with respect to the original</p> <p>13 issuance of the construction permit?</p> <p>14 A. That's correct.</p> <p>15 Q. Would that have been about in 1974?</p> <p>16 A. Yes. Since 1974. And I believe my report</p> <p>17 references the decision of the licensing board and the</p> <p>18 -- in effect the sewage plant review of the -- system</p> <p>19 appeal board on the Bellefonte permit.</p> <p>20 Q. Are you aware of any other hearings relating</p> <p>21 to the Bellefonte construction permit?</p>

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<p style="text-align: right;">Page 29</p> <p>1 A. No. I think the only -- I don't know of any</p> <p>2 hearings that were actually conducted. I think there</p> <p>3 were challenges to the reinstatement of the</p> <p>4 construction permit in, I think that was in 2009 --</p> <p>5 2008 or 2009. But -- and I think -- but I think those</p> <p>6 were dismissed for basically either lack of standing</p> <p>7 or lack of acceptable contention.</p> <p>8 Q. Is the NRC an independent regulatory</p> <p>9 Commission of the federal government?</p> <p>10 A. Yes, it is.</p> <p>11 Q. Is it required by law to be independent of</p> <p>12 the entities that it regulates?</p> <p>13 A. Yes, it is. And it's structured that way.</p> <p>14 Q. And the NRC regulates TVA's activities with</p> <p>15 respect to its nuclear related facilities. Is that</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. And do you say, is the NRC independent of</p> <p>19 TVA?</p> <p>20 A. Yes, it is.</p> <p>21 Q. You mentioned enforcement actions as part of</p>	<p style="text-align: right;">Page 31</p> <p>1 program offices. They may be, for example, the</p> <p>2 director of NRR might issue an order for a violation</p> <p>3 or to address violations or poor performance but the</p> <p>4 director also can impose new requirements based on a</p> <p>5 perception of the need to act according to safety.</p> <p>6 But for the most part, those actions are</p> <p>7 taken at a staff level. There may be some instances</p> <p>8 in which there's a communication or coordination with</p> <p>9 the Commission.</p> <p>10 Q. What is the role of the director of Nuclear</p> <p>11 Reactor Regulation in the enforcement process?</p> <p>12 A. Again, it depends on what the nature of the</p> <p>13 enforcement -- the violation may be.</p> <p>14 I would say my understanding is that if you</p> <p>15 have a violation coming out of an inspection, those</p> <p>16 are generally going to be handled through regional</p> <p>17 office that was responsible for the inspection.</p> <p>18 Where the NRR may have a view on it, and so</p> <p>19 staff -- there may be staff interaction, at the staff</p> <p>20 level within NRR. The director would probably be</p> <p>21 informed at more significant levels.</p>
<p style="text-align: right;">Page 30</p> <p>1 the adjudication process. Who handles the enforcement</p> <p>2 actions as the prosecutor of sorts?</p> <p>3 A. The process, it can depend on the level of</p> <p>4 the action, enforcement action taken.</p> <p>5 There is an Office of Enforcement that</p> <p>6 reports to the executive director for operations and</p> <p>7 that office coordinates with regional offices and with</p> <p>8 the program offices, that would be Nuclear Reactor</p> <p>9 Regulation and Nuclear Material Safety and Safeguard.</p> <p>10 But in a number of instances, so that the</p> <p>11 level of an action may be taken by a different level</p> <p>12 official. So historically I'd notice a violation if</p> <p>13 it were identified in an inspection carried out by a</p> <p>14 regional office; one of the four regional offices.</p> <p>15 And would be issued by the regional office, an</p> <p>16 official in that regional office.</p> <p>17 Civil penalty, this has changed over the</p> <p>18 years since I was sort of directly counsel. But I</p> <p>19 think the civil penalties are often issued through the</p> <p>20 Office of Enforcement.</p> <p>21 Orders may be issued by the directors of the</p>	<p style="text-align: right;">Page 32</p> <p>1 And under what's called the reactor</p> <p>2 oversight process, which is a -- it's basically the</p> <p>3 approach that the NRC has taken to oversight and</p> <p>4 enforcement of reactors -- basically operating</p> <p>5 reactors since about 2001. The director is involved</p> <p>6 with like an annual assessment process about how the</p> <p>7 -- how a reactor, operating reactors are doing. And</p> <p>8 so he or she would have impact or input into that</p> <p>9 evaluation as to whether or not in heightened scrutiny</p> <p>10 it's warranted because of poor performance at a</p> <p>11 reactor site.</p> <p>12 Q. And then, you used the term "order" earlier.</p> <p>13 Is that a term of art within the Agency?</p> <p>14 A. Well, I don't think so. I don't think so.</p> <p>15 The -- I think the provision for orders are in Section</p> <p>16 2.202 of the 10 CFR.</p> <p>17 And so what it talks to -- when I use the</p> <p>18 term "order," I'm often referring to it can be an</p> <p>19 order to modify, suspended or revoke a license or to,</p> <p>20 as the other area I mentioned, it might be the</p> <p>21 circumstance in which you are imposing a new</p>

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<p style="text-align: right;">Page 33</p> <p>1 requirement to address some safety issue, or you might</p> <p>2 be requiring the licensee to undertake some study or</p> <p>3 evaluation and report back to the Agency.</p> <p>4 Q. Well, is "order" a term for the disposition</p> <p>5 of an enforcement matter? In other words, it can be</p> <p>6 any disposition. Is that correct?</p> <p>7 A. No. No, I would not agree with that. It is</p> <p>8 a high level -- if you want to use the word</p> <p>9 "sanction," it's a high level sanction.</p> <p>10 It is typically and perhaps in this respect,</p> <p>11 I really don't know that it's a "term of art." But it</p> <p>12 is typically used, an order is issued to modify,</p> <p>13 suspend or revoke a license, or for such other action</p> <p>14 that may be appropriate.</p> <p>15 So, for example, you do not issue a notice</p> <p>16 of violation by -- typically by an order if there's no</p> <p>17 additional sanction other than noting a violation.</p> <p>18 Q. Can the director of Nuclear Reactor</p> <p>19 Regulation issue orders?</p> <p>20 A. Yes. Since the beginning of my career there</p> <p>21 at the NRC, that has been a function of the director</p>	<p style="text-align: right;">Page 35</p> <p>1 Commission. Is that correct?</p> <p>2 A. No. It's focused on sanctioning or imposing</p> <p>3 requirements on a particular licensee or a set of</p> <p>4 licensees. And in my experience, there have been</p> <p>5 circumstances in which the entire set of licensees in</p> <p>6 a particular area have received an order.</p> <p>7 Q. But I asked you if that was correct, and you</p> <p>8 said no. So let me restate it.</p> <p>9 The issuance of an order by a director such</p> <p>10 as the director of Nuclear Reactor Regulation is not</p> <p>11 part of the rulemaking process of the Commission. Is</p> <p>12 that correct?</p> <p>13 A. I would agree that it is not undertaken</p> <p>14 through the rulemaking process.</p> <p>15 Q. And an order issued by a director is not</p> <p>16 action by the Commission. Is that correct?</p> <p>17 A. No, I wouldn't agree with that. From the</p> <p>18 standpoint the director has delegated authority from</p> <p>19 the Commission to act on matters that are within the</p> <p>20 director's jurisdiction.</p> <p>21 Q. Well, orders issued by directors can be</p>
<p style="text-align: right;">Page 34</p> <p>1 -- of the director.</p> <p>2 Q. When that director issues an order or a</p> <p>3 decision, is that order or decision considered a rule</p> <p>4 of the Commission?</p> <p>5 A. Well, the order has legal effect.</p> <p>6 Q. No. Is it considered a rule?</p> <p>7 MR. LEMBKE: Wait a moment. You didn't let</p> <p>8 him finish his answer, Caine. You need to let him</p> <p>9 finish his answer before you ask your next question.</p> <p>10 THE WITNESS: Well, as I say, I would -- an</p> <p>11 order is an enforceable sanction or an enforceable</p> <p>12 requirement on a licensee. But this is, I think in a</p> <p>13 classic administrative law dichotomy, you have rules</p> <p>14 and you have orders. They both have legal effect.</p> <p>15 BY MR. O'REAR:</p> <p>16 Q. But the order is not a rule of the</p> <p>17 Commission. Is that correct?</p> <p>18 A. No, I would not characterize it as a rule.</p> <p>19 But it still has legal effect.</p> <p>20 Q. And when a director issues an order, that --</p> <p>21 the director is not engaging in rulemaking for the</p>	<p style="text-align: right;">Page 36</p> <p>1 taken to the Commission. Is that correct?</p> <p>2 A. They can be appealed to the -- well, they</p> <p>3 can be appealed to the Commission if a third party or</p> <p>4 a licensee challenges it. And they would be taken to</p> <p>5 the Commission typically after the opportunity for</p> <p>6 hearing before an atomic safety and licensing board.</p> <p>7 Q. But unless there is an appeal to the</p> <p>8 Commission, an order of the director is not action by</p> <p>9 the Commission. Is that correct?</p> <p>10 A. By the commissioners themselves. It's not</p> <p>11 action by the commissioners themselves. It stands as</p> <p>12 a valid action of the Nuclear Regulatory Commission.</p> <p>13 Q. Have you ever visited the Bellefonte site?</p> <p>14 A. No, I have not visited the Bellefonte site.</p> <p>15 Q. When you were working as an attorney for the</p> <p>16 NRC, did you ever work on any matters related to the</p> <p>17 Bellefonte site?</p> <p>18 A. I think when I was deputy general counsel, I</p> <p>19 may have been aware -- made aware and spoken with my</p> <p>20 staff with regard to the Bellefonte -- the TVA's</p> <p>21 decision to at that point withdraw the construction</p>

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<p style="text-align: right;">Page 37</p> <p>1 permit in whatever -- in the 2005, 2006 time frame.</p> <p>2 As general counsel, I was probably -- I have</p> <p>3 some recollection of speaking with my staff at that</p> <p>4 time when the legal staff reported to me, when the --</p> <p>5 when TVA had initiated the steps to reinstate the</p> <p>6 permit. And in fact, the NRC staff, I don't know</p> <p>7 whether it was signed by the director of Nuclear</p> <p>8 Reactor Regulations or it may have been signed by the</p> <p>9 executive director for operations, came to the</p> <p>10 Commission and in that circumstance asked the</p> <p>11 Commission to reflect its view that it thought it was</p> <p>12 a lawful and an appropriate step to reinstate the</p> <p>13 permit.</p> <p>14 And so, I would have been aware of that and</p> <p>15 I may have been consulted by some of the commissioners</p> <p>16 on it at the time.</p> <p>17 Q. You said this was when you were general</p> <p>18 counsel?</p> <p>19 A. Correct. So this was sometime -- I think it</p> <p>20 was in the 2009 time frame.</p> <p>21 Q. Have you been involved in any other matters</p>	<p style="text-align: right;">Page 39</p> <p>1 permits for Bellefonte go before the Commission?</p> <p>2 A. Yes. The staff consulted with the</p> <p>3 Commission and the Commission voted on the</p> <p>4 reinstatement. And I believe there was also an</p> <p>5 adjudicatory challenge, I think. I think the Blue</p> <p>6 Ridge group is the one that often intervened or tried</p> <p>7 to intervene on TVA matters.</p> <p>8 I believe they sought to challenge the</p> <p>9 reinstatement, and there may have been some</p> <p>10 adjudication or adjudicatory orders on that. That I</p> <p>11 just don't recall.</p> <p>12 Q. Did you advise the Commission with respect</p> <p>13 to the reinstatement matter?</p> <p>14 A. Yes. Because, again, my office was</p> <p>15 responsible for concurring in the paper that the staff</p> <p>16 sent to the Commission, and I would have been</p> <p>17 available to commissioners and their staffs to discuss</p> <p>18 where it is.</p> <p>19 I don't have a particular recollection of</p> <p>20 discussions with commissioners, but I certainly was</p> <p>21 aware of it because it was an unusual circumstance.</p>
<p style="text-align: right;">Page 38</p> <p>1 regarding the Bellefonte plant while you were at the</p> <p>2 NRC?</p> <p>3 A. Not that I'm aware of.</p> <p>4 Q. What matters were pending before the NRC</p> <p>5 while you were there that you may have had official</p> <p>6 responsibility for but did not personally participate</p> <p>7 in?</p> <p>8 MR. LEMBKE: Objection to the form, vague.</p> <p>9 BY MR. O'REAR:</p> <p>10 Q. Well, do you recall any matters at the NRC</p> <p>11 that you may have had supervisory or official</p> <p>12 responsibility over but did not personally participate</p> <p>13 in that related to the Bellefonte plant site?</p> <p>14 A. In what time frame?</p> <p>15 Q. At any time you were there.</p> <p>16 A. Other than the two I mentioned; the initial</p> <p>17 withdrawal of the permit and then the request for</p> <p>18 reinstatement, I had no other supervisory</p> <p>19 responsibility -- or I don't recall any particular</p> <p>20 matters.</p> <p>21 Q. Did the reinstatement of the construction</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. The Blue Ridge group is an environmental</p> <p>2 group?</p> <p>3 A. Yes, I think it's like Blue Ridge</p> <p>4 Environmental, yeah, and I forget the last name. But</p> <p>5 it's yeah, an environmental group generally that</p> <p>6 intervened or attempted to intervene on a number of</p> <p>7 TVA matters.</p> <p>8 Q. Were you involved in the hearing regarding</p> <p>9 that adjudication initiated by the Blue Ridge</p> <p>10 Environmental group?</p> <p>11 A. I don't know.</p> <p>12 MR. LEMBKE: Hold on. Hold on. Objection</p> <p>13 to the form. It's a lack of foundation.</p> <p>14 I don't think he testified there</p> <p>15 definitively was such a hearing.</p> <p>16 MR. O'REAR: I believe he said there was</p> <p>17 some adjudicatory process.</p> <p>18 MR. LEMBKE: No, he didn't. He said there</p> <p>19 may have been.</p> <p>20 MR. O'REAR: All right.</p> <p>21 BY MR. O'REAR:</p>

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<p style="text-align: right;">Page 41</p> <p>1 Q. Tell us what you recall about that.</p> <p>2 A. As I said, I don't -- I have a vague</p> <p>3 recollection that the Blue Ridge group may have filed</p> <p>4 a challenge. I don't have any particular recollection</p> <p>5 beyond that.</p> <p>6 That challenge, if there had been a</p> <p>7 challenge, it would have been either referred to a</p> <p>8 licensing board. It's possible it came to the</p> <p>9 Commission. I don't recall. And part of that may be</p> <p>10 the timing. Because depending on when it came, I</p> <p>11 might have been gone.</p> <p>12 Q. You might have been gone, meaning you left</p> <p>13 in 2012?</p> <p>14 A. Yes, yes.</p> <p>15 Q. Okay. My question -- let me state the</p> <p>16 question this way.</p> <p>17 Were you involved in any matters relating to</p> <p>18 the Bellefonte plant while you were commissioner?</p> <p>19 A. No. There was nothing that came to the</p> <p>20 Commission for its determination or action when I was</p> <p>21 a commissioner.</p>	<p style="text-align: right;">Page 43</p> <p>1 A. So was I aware then of the TVA decision?</p> <p>2 Q. Yes.</p> <p>3 A. I don't have any particular recollection one</p> <p>4 way or the other.</p> <p>5 Q. Were you aware of it at any time prior to</p> <p>6 your leaving the Commission?</p> <p>7 A. Well, I think the answer to that is yes,</p> <p>8 because while we did not as commissioners have any</p> <p>9 particular action before us with respect to a</p> <p>10 potential transfer of the site and its construction</p> <p>11 permit, we were aware of that. We were aware that --</p> <p>12 that in effect what that means is, you know,</p> <p>13 implicitly if not knowing even explicitly, which I</p> <p>14 think we did, that TVA was not planning to pursue</p> <p>15 itself the completion of construction of the facility.</p> <p>16 And I will note, we did have a drop-in visit from</p> <p>17 Nuclear Development.</p> <p>18 Q. Was there any discussion at the Commission</p> <p>19 level or among the commissioners regarding TVA's</p> <p>20 decision to sell the Bellefonte site?</p> <p>21 MR. LEMBKE: Objection, compound question.</p>
<p style="text-align: right;">Page 42</p> <p>1 Q. Were there any matters pending before the</p> <p>2 NRC regarding the Bellefonte plant while you were a</p> <p>3 commissioner?</p> <p>4 A. Well, I believe that the Nuclear</p> <p>5 Development's application was filed with the staff in</p> <p>6 November of 2018. So I was still -- I was a</p> <p>7 commissioner then, but that was not something that</p> <p>8 came -- that was not before the commissioners at that</p> <p>9 time.</p> <p>10 Q. Okay. And that application that was filed</p> <p>11 while you were a commissioner remains pending today.</p> <p>12 Is that correct?</p> <p>13 A. That's my understanding.</p> <p>14 Q. Were you aware that TVA in April of 2016</p> <p>15 decided to declare the Bellefonte plant as surplus</p> <p>16 property to sell it?</p> <p>17 A. In terms -- I'm not sure I understand. I</p> <p>18 understand the subject of the question, but I'm not</p> <p>19 sure I understand the time frame you're talking about.</p> <p>20 Q. The time frame is May or April -- excuse</p> <p>21 me -- of 2016.</p>	<p style="text-align: right;">Page 44</p> <p>1 BY MR. O'REAR:</p> <p>2 Q. Was there any discussion among your</p> <p>3 commissioners about TVA's decision to sell the</p> <p>4 Bellefonte site?</p> <p>5 A. Not that I'm -- not that I can recall.</p> <p>6 Q. Did you have any communications with anyone</p> <p>7 at TVA about the decision to sell the Bellefonte site?</p> <p>8 A. Not that I can recall.</p> <p>9 Q. Do you think you may have?</p> <p>10 A. No, I don't.</p> <p>11 Q. You said there was a drop-in meeting with</p> <p>12 the -- with Nuclear Development representatives?</p> <p>13 A. That's correct.</p> <p>14 Q. And when did that happen?</p> <p>15 A. I believe it was in -- it was in early 2017.</p> <p>16 I think it was like April 2017.</p> <p>17 The reason I say that, because I know I was</p> <p>18 removed by Mr. Trump as chairman by that time.</p> <p>19 Q. Okay. So you were actually removed as</p> <p>20 chairman by President Trump?</p> <p>21 A. Right, that's the president's authority.</p>

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<p style="text-align: right;">Page 45</p> <p>1 Q. Right. But that's why you moved from the</p> <p>2 chairmanship to --</p> <p>3 A. That's correct. Because you have -- you</p> <p>4 have the term and the term runs until it expires or</p> <p>5 unless you're removed.</p> <p>6 Q. Okay. And, so, you recall the drop-in</p> <p>7 meeting occurred after that?</p> <p>8 A. Yes, as I say, I recall it was early spring.</p> <p>9 I think it was April of 2017.</p> <p>10 Q. Okay. I'll ask you about that in a few</p> <p>11 minutes. Let me ask you this.</p> <p>12 Were you aware that TVA actually entered</p> <p>13 into a contract in 2016 with Nuclear Development to</p> <p>14 sell the Bellefonte site?</p> <p>15 MR. LEMBKE: Where, when?</p> <p>16 MR. O'REAR: Ever aware.</p> <p>17 MR. LEMBKE: Even today?</p> <p>18 MR. O'REAR: No.</p> <p>19 BY MR. O'REAR:</p> <p>20 Q. While you were at the NRC?</p> <p>21 A. Well, I think -- you know, I couldn't</p>	<p style="text-align: right;">Page 47</p> <p>1 weekly or biweekly meetings mentioned it. But I don't</p> <p>2 have any particular recollection.</p> <p>3 Q. And who was the executive director of</p> <p>4 operations at that time?</p> <p>5 A. At that point it was Victor McCree, M-C,</p> <p>6 C-R-E-E.</p> <p>7 Q. Okay. Do you know -- do you recall anything</p> <p>8 being discussed in particular?</p> <p>9 A. No, I do not.</p> <p>10 Q. Do you recall any discussion within the NRC</p> <p>11 about whether this was a good thing or not that TVA</p> <p>12 was selling the Bellefonte site to a potential</p> <p>13 merchant operator?</p> <p>14 A. Could you repeat that?</p> <p>15 Q. Did you have any communications with anyone</p> <p>16 within the NRC about whether this was a good thing or</p> <p>17 not a good thing, that TVA would be selling the</p> <p>18 Bellefonte site to a merchant operator?</p> <p>19 A. No. That is not -- that kind of framework</p> <p>20 is not something that would have come up, whether it</p> <p>21 was good or bad.</p>
<p style="text-align: right;">Page 46</p> <p>1 pinpoint when I might have become aware of it or</p> <p>2 exactly what I became aware of.</p> <p>3 I certainly think probably in that drop-in</p> <p>4 meeting, Nuclear Development probably communicated</p> <p>5 that.</p> <p>6 Q. That there was a contract?</p> <p>7 A. No. There was some sort of an arrangement.</p> <p>8 Q. Did you ever -- while you were at the NRC,</p> <p>9 did you ever see the contract between Nuclear</p> <p>10 Development and TVA?</p> <p>11 A. No.</p> <p>12 Q. Did you have any communications with anyone</p> <p>13 at TVA about the contract that had been entered into</p> <p>14 with Nuclear Development?</p> <p>15 A. No.</p> <p>16 Q. Did you have any communications with any</p> <p>17 staff of the NRC about -- while you were at NRC, with</p> <p>18 the staff of NRC about TVA's decision to sell the</p> <p>19 Bellefonte site?</p> <p>20 A. I don't recall any. It is conceivable that</p> <p>21 the executive director for operations in one of our</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. While you were at the NRC, were you aware</p> <p>2 that there was a closing date scheduled for the sale</p> <p>3 of the plant to Nuclear Development in November of</p> <p>4 2018?</p> <p>5 A. I don't have any particular recollection of</p> <p>6 discussing that or noting that. I think probably the,</p> <p>7 you know, people in the Agency and I may well have</p> <p>8 received some communication of it in November of 2018,</p> <p>9 but I don't have any particular recollection.</p> <p>10 Q. And if someone in the Agency had received a</p> <p>11 communication, who would the communication have been</p> <p>12 from?</p> <p>13 MR. LEMBKE: Objection, calls for</p> <p>14 speculation.</p> <p>15 MR. O'REAR: Well, he recalls some</p> <p>16 communication.</p> <p>17 BY MR. O'REAR:</p> <p>18 Q. Who would it have been from?</p> <p>19 MR. LEMBKE: No, he -- no, wait a minute.</p> <p>20 Object to the form. That misstates his testimony. He</p> <p>21 said he didn't recall any communications.</p>

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<p style="text-align: right;">Page 49</p> <p>1 BY MR. O'REAR:</p> <p>2 Q. I thought you said that there may have been</p> <p>3 some communication about that. Did you not?</p> <p>4 A. As I say, I don't recall any particular</p> <p>5 communication. Staff -- it conceivably may have had</p> <p>6 information relayed by the staff, the NRC staff. But</p> <p>7 I -- again, I don't have any particular recollection.</p> <p>8 Q. Were you aware that Nuclear Development sued</p> <p>9 TVA for breach of contract for refusing to close while</p> <p>10 you were at the NRC?</p> <p>11 MR. LEMBKE: Okay. You can go ahead.</p> <p>12 THE WITNESS: Actually I don't have any</p> <p>13 particular recollection of learning of a suit between</p> <p>14 the two parties.</p> <p>15 BY MR. O'REAR:</p> <p>16 Q. Is it correct to say that while you were at</p> <p>17 the NRC, you have no recollection of knowing that</p> <p>18 there was a lawsuit between TVA and Nuclear</p> <p>19 Development over the contract?</p> <p>20 A. What I'm saying is I had no particular</p> <p>21 awareness of the lawsuit between the two parties.</p>	<p style="text-align: right;">Page 51</p> <p>1 Q. Have you seen the document before today?</p> <p>2 A. Yes, I believe I have.</p> <p>3 Q. All right. And can you identify it as a</p> <p>4 summary of a public meeting NRC held on August the</p> <p>5 14th, 2018 regarding the Bellefonte site, Nuclear</p> <p>6 Development's desire to submit a request for transfer</p> <p>7 of the construction permit?</p> <p>8 A. Well, that's how the memo describes itself</p> <p>9 as a meeting -- a meeting on the pre-submittal of an</p> <p>10 application. A pre-submittal of a request. A</p> <p>11 transfer, I should say.</p> <p>12 Q. And when did you first see this document?</p> <p>13 A. I probably first saw it when I was doing</p> <p>14 some of my research for the expert report.</p> <p>15 Q. Okay. So it is your testimony you did not</p> <p>16 see this memo while you were a commissioner at the</p> <p>17 NRC?</p> <p>18 A. I don't recall seeing it then. And I think</p> <p>19 looking at the general distribution on Page 2, it is</p> <p>20 not something that typically would go to the -- come</p> <p>21 up to the Commission.</p>
<p style="text-align: right;">Page 50</p> <p>1 Q. At any time while you were at the NRC?</p> <p>2 A. Yes, I don't -- I just don't recall it.</p> <p>3 Q. If you would look at your exhibits there,</p> <p>4 the next exhibit should be Exhibit 11.</p> <p>5 A. Yes.</p> <p>6 Q. You see that?</p> <p>7 A. Yes, I do.</p> <p>8 Q. Can you identify Exhibit 11 as a</p> <p>9 September 4, 2018 memorandum from the NRC from Mr.</p> <p>10 Billy Gleaves, a project manager that contains a</p> <p>11 summary of a public meeting that occurred on August</p> <p>12 the 14th, 2018?</p> <p>13 MR. LEMBKE: I'm going to object to the</p> <p>14 form, lack of foundation.</p> <p>15 MR. O'REAR: I'm asking him if he can</p> <p>16 identify it as such.</p> <p>17 MR. LEMBKE: Well, you haven't established</p> <p>18 that he's ever seen this document before.</p> <p>19 MR. O'REAR: Well, he can answer.</p> <p>20 THE WITNESS: What's the question, again?</p> <p>21 BY MR. O'REAR:</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. Were you aware that a public meeting -- that</p> <p>2 this public meeting had occurred while you were a</p> <p>3 commissioner at the NRC?</p> <p>4 A. I don't think I was aware of that.</p> <p>5 Q. Did you have any discussion of a public</p> <p>6 meeting that the NRC conducted in August of 2018</p> <p>7 regarding Bellefonte with anyone at the NRC?</p> <p>8 MR. LEMBKE: While he was at the NRC?</p> <p>9 MR. O'REAR: Yes, in a discussion with</p> <p>10 anyone at the NRC.</p> <p>11 THE WITNESS: I don't recall any discussion</p> <p>12 of it.</p> <p>13 BY MR. O'REAR:</p> <p>14 Q. Okay. I note there were 16 attendees at the</p> <p>15 meeting from the NRC. It notes that David Roth, OGC,</p> <p>16 was present.</p> <p>17 A. Correct.</p> <p>18 Q. Was he the general counsel?</p> <p>19 A. No.</p> <p>20 Q. Just in the Office of General Counsel?</p> <p>21 A. The Office of General Counsel. He might</p>

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<p style="text-align: right;">Page 53</p> <p>1 have had some supervisory role at that point. I just</p> <p>2 don't recall.</p> <p>3 Q. Have you ever had any discussions with him</p> <p>4 about this meeting?</p> <p>5 A. No.</p> <p>6 Q. Have you ever had a discussion with him</p> <p>7 about the Bellefonte site in general?</p> <p>8 A. No.</p> <p>9 MR. LEMBKE: If this is a point, let's take</p> <p>10 a short break.</p> <p>11 MR. O'REAR: Okay. Let's do that.</p> <p>12 MR. LEMBKE: Great.</p> <p>13 MR. O'REAR: How long? Five minutes?</p> <p>14 MR. LEMBKE: Five minutes is fine.</p> <p>15 MR. O'REAR: Thanks.</p> <p>16 (Whereupon, a recess ensued.)</p> <p>17 MR. O'REAR: Back on the record.</p> <p>18 BY MR. O'REAR:</p> <p>19 Q. Mr. Burns, would you look at Exhibit 82 that</p> <p>20 should be in your stack there?</p> <p>21 (Burns Exhibit No. 82 was marked for</p>	<p style="text-align: right;">Page 55</p> <p>1 A. I don't recall any particular discussion</p> <p>2 about the application. And actually at this point in</p> <p>3 time, I'm not sure I recall -- at this point in time,</p> <p>4 Mr. McCree was no longer the executive director for</p> <p>5 operations.</p> <p>6 Q. Okay. Did you have any -- well, when he was</p> <p>7 director -- executive director of operations, did you</p> <p>8 have any communication with him regarding the</p> <p>9 Bellefonte site?</p> <p>10 A. I don't recall any particular communication</p> <p>11 with him.</p> <p>12 Q. Are you aware that he met with officials of</p> <p>13 Nuclear Development prior to your drop-in meeting with</p> <p>14 them?</p> <p>15 A. Aware now or aware then?</p> <p>16 Q. Were you aware then?</p> <p>17 A. I don't have any particular recollection of</p> <p>18 being made aware of his meeting, if he had meetings or</p> <p>19 whatever they were with Nuclear Development.</p> <p>20 I mean, my only -- the only thing I recall</p> <p>21 is the drop-in visit, which happened as I think in</p>
<p style="text-align: right;">Page 54</p> <p>1 identification.)</p> <p>2 THE WITNESS: Yes, I have it.</p> <p>3 BY MR. O'REAR:</p> <p>4 Q. If you would turn to the second page, it is</p> <p>5 a letter dated November 13, 2018 from Nuclear</p> <p>6 Development containing the application for an order</p> <p>7 approving the construction permit transfers. Do you</p> <p>8 see that?</p> <p>9 A. Yes, I see that.</p> <p>10 Q. Did you ever see this application while you</p> <p>11 were at the NRC?</p> <p>12 A. I don't recall seeing it.</p> <p>13 Q. When do you recall first seeing it?</p> <p>14 A. I probably first saw it when I started doing</p> <p>15 some of the work as an expert for TVA.</p> <p>16 Q. And did you have any discussion while you</p> <p>17 were at the NRC with anyone at the NRC about the</p> <p>18 application?</p> <p>19 A. No.</p> <p>20 Q. Have you ever talked to Victor McCree about</p> <p>21 the application?</p>	<p style="text-align: right;">Page 56</p> <p>1 March or April of 2017.</p> <p>2 Q. Okay. Well, tell us what you remember about</p> <p>3 that?</p> <p>4 A. The drop-in meeting?</p> <p>5 Q. Yes.</p> <p>6 A. About all I recall of that, it was drop-in.</p> <p>7 I think Mr. Blust, I think Mr. McCollum, there may</p> <p>8 have been one other person there, I don't remember.</p> <p>9 But it was just a brief meeting, probably somewhere on</p> <p>10 the order of 20 to 30 minutes, where they were</p> <p>11 introducing themselves and indicating they -- their</p> <p>12 plan. They were planning to acquire the Bellefonte</p> <p>13 project and they were hoping to continue it to</p> <p>14 completion of construction.</p> <p>15 Q. Did you express to them support for the</p> <p>16 Bellefonte project that they envisioned?</p> <p>17 A. No, I would not have done that. Not in that</p> <p>18 type of context.</p> <p>19 Q. Did you know during that meeting that they</p> <p>20 had entered into a contract with TVA to purchase the</p> <p>21 site?</p>

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<p style="text-align: right;">Page 57</p> <p>1 A. Again, I don't recall particularly what was</p> <p>2 related during the meeting other than at the high</p> <p>3 level I recall, yes, their attention was to proceed to</p> <p>4 obtain the Bellefonte site and to proceed with its</p> <p>5 construction and hopefully bring it into operation as</p> <p>6 an operable nuclear power station.</p> <p>7 Q. And so in order to proceed with</p> <p>8 construction, they would need construction permits,</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. And so was there a discussion by them that</p> <p>12 they intended to file an application with the NRC for</p> <p>13 transfer of the construction permit?</p> <p>14 A. Well, I think it -- again, at a high level</p> <p>15 they would have communicated that they were intending</p> <p>16 to obtain construction permits because they have to</p> <p>17 have construction permits to do anything on the site.</p> <p>18 Q. And what, if anything, did you say to the</p> <p>19 Nuclear Development representatives when you met with</p> <p>20 them?</p> <p>21 A. I don't have any recollection of particular</p>	<p style="text-align: right;">Page 59</p> <p>1 the Commission at that time were then Chairman</p> <p>2 Svinicki and Commissioner Baran, B-A-R-A-N.</p> <p>3 Q. Okay. And do you know that they met with</p> <p>4 them?</p> <p>5 A. I believe that's the case.</p> <p>6 Q. Did you have any discussions with</p> <p>7 Commissioner Svinicki or Commissioner Baran about</p> <p>8 their meetings with Nuclear Development?</p> <p>9 A. Not that I recall.</p> <p>10 Q. Do you know whether any of the commissioners</p> <p>11 asked Nuclear Development for support in Congress for</p> <p>12 proposed budgets for the NRC?</p> <p>13 A. I have no knowledge of that.</p> <p>14 Q. And you had no such discussions. Is that</p> <p>15 correct?</p> <p>16 A. I --</p> <p>17 MR. LEMBKE: Objection, asked and answered.</p> <p>18 You can answer it again.</p> <p>19 THE WITNESS: As I said, that is not</p> <p>20 typically something I would do.</p> <p>21 BY MR. O'REAR:</p>
<p style="text-align: right;">Page 58</p> <p>1 things I may have said.</p> <p>2 Q. Did you have any discussion with them about</p> <p>3 the NRC's budget requirements?</p> <p>4 A. I don't recall discussing the budget aspect</p> <p>5 of it.</p> <p>6 Q. Did you have any discussion with them in</p> <p>7 which you asked for their assistance in encouraging</p> <p>8 Congress to approve an NRC budget?</p> <p>9 A. I don't recall doing that and that's not</p> <p>10 typically something I would do.</p> <p>11 Q. Did you have any communications -- were you</p> <p>12 aware that they were having meetings with other</p> <p>13 commissioners on the same day?</p> <p>14 A. I -- basically, yes. Whether it was going</p> <p>15 to all happen that same day. But generally in these</p> <p>16 types of meetings, if you're coming in to see one</p> <p>17 commissioner, you're coming in to see all. So I think</p> <p>18 I was generally aware that that was happening.</p> <p>19 Q. Do you know what other commissioners they</p> <p>20 met with that day?</p> <p>21 A. Well, the only two other commissioners on</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. Okay. Well, whether it's typically</p> <p>2 something you would do or not, your answer is no. Is</p> <p>3 that correct?</p> <p>4 A. No.</p> <p>5 Q. Did you have any discussions with Nuclear</p> <p>6 Development about the fees it would be required to pay</p> <p>7 the NRC for submitting an application for transfer of</p> <p>8 construction permit?</p> <p>9 A. I don't recall any such discussion.</p> <p>10 Q. Let me make sure I understand your answer to</p> <p>11 this.</p> <p>12 Are you saying you were not aware that</p> <p>13 representatives of Nuclear Development had met with</p> <p>14 NRC -- NRC staff personnel prior to their meeting with</p> <p>15 the commissioners?</p> <p>16 A. No, I think I had an awareness that there</p> <p>17 was engagement between Nuclear Development and the NRC</p> <p>18 staff. But I don't have, you know, any particular</p> <p>19 recollection of what was communicated to me or, you</p> <p>20 know, details -- the details of the meeting. I just,</p> <p>21 I don't have a recollection of that.</p>

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<p style="text-align: right;">Page 61</p> <p>1 Q. And is it your testimony that after you met</p> <p>2 with the Nuclear Development representatives, that you</p> <p>3 don't recall any communications with NRC staff about</p> <p>4 Nuclear Development or Bellefonte?</p> <p>5 A. I don't recall of any. I don't, you know,</p> <p>6 there is nothing that I can -- to the extent I recall</p> <p>7 anything of the meeting that would have prompted me to</p> <p>8 reach out to the staff at that point.</p> <p>9 Q. Well, I'm just asking for any communication</p> <p>10 whether you reached out to them or they reached out to</p> <p>11 you?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Now, when you were at the NRC over the</p> <p>14 entire period of time that you were there, did you</p> <p>15 have a high volume of communications with TVA</p> <p>16 regarding matters before the NRC?</p> <p>17 A. I'm not sure I understand what you mean by a</p> <p>18 high volume.</p> <p>19 Q. Okay. What I was trying to get some general</p> <p>20 sense before I ask the question, tell us about all</p> <p>21 your communications with TVA while you were at the</p>	<p style="text-align: right;">Page 63</p> <p>1 like, and probably some work with respect to -- well,</p> <p>2 not probably, I know some work with respect to Watts</p> <p>3 Bar and the completion of the Watts Bar Unit One, back</p> <p>4 in the 1990s. And then sort of taking Watts Bar two</p> <p>5 out of the deferred status and completing it. I</p> <p>6 visited Watts Bar as a commissioner fairly early in my</p> <p>7 term and that's probably -- that's probably it.</p> <p>8 Q. What was the purpose for your visit to Watts</p> <p>9 Bar when you were a commissioner?</p> <p>10 A. The purpose is, one of the things</p> <p>11 commissioners do and here I take lead from my boss in</p> <p>12 the late 1980's, Admiral Carr, who basically made it</p> <p>13 his practice, that he was the one that sort of started</p> <p>14 the Commission tradition of -- he got to every</p> <p>15 operating nuclear power plant. And so I think what</p> <p>16 commissioners have done since then -- I never got to</p> <p>17 that level -- but commissioners as part of our sort of</p> <p>18 making sure we understand what's going on in the</p> <p>19 regulating community, we go out and we visit -- we</p> <p>20 visit plant sites, not only power plants but medical</p> <p>21 centers, things like that.</p>
<p style="text-align: right;">Page 62</p> <p>1 NRC?</p> <p>2 A. And this is over what period? My entire</p> <p>3 career?</p> <p>4 Q. Yes.</p> <p>5 A. Well, I think -- again, we are talking</p> <p>6 about, you know, close to 40 years.</p> <p>7 There were probably several matters that I</p> <p>8 was assigned to early in my career that might have</p> <p>9 involved either a petition for enforcement action</p> <p>10 under Section 2206 involved TVA.</p> <p>11 I know I do recall being involved in some</p> <p>12 what I'll call enforcement matters due to quality</p> <p>13 assurance issues that arose at TVA in the mid -- in</p> <p>14 the mid 1980s.</p> <p>15 So I -- again, so there may have been</p> <p>16 communications with TVA counsel at that time. But,</p> <p>17 you know -- well, my recollection is more is working</p> <p>18 on some matters.</p> <p>19 And sort of since that time -- again, the</p> <p>20 matters that would have come up with TVA, you know, we</p> <p>21 discussed earlier with respect to Bellefonte and the</p>	<p style="text-align: right;">Page 64</p> <p>1 So my purpose was here you had Watts Bar</p> <p>2 unit two which was in the unusual situation that it</p> <p>3 had -- that basically construction and movement</p> <p>4 towards operation had been suspended -- actually it</p> <p>5 may have been in the 1980s. But certainly, by the</p> <p>6 1990s, and it was moving toward -- it had start --</p> <p>7 TVA decided to restart the project and it was moving</p> <p>8 toward completion.</p> <p>9 So going out there to see what challenges</p> <p>10 they had, see what the progress was, that's what was</p> <p>11 the purpose of the trip.</p> <p>12 And as I say, that's probably, you know, one</p> <p>13 of a couple dozen trips domestically I made to power</p> <p>14 plants or other licensed facilities.</p> <p>15 Q. And who did you meet with at TVA when you</p> <p>16 were on that trip?</p> <p>17 A. He is now gone. Mike Tardi -- I think it's</p> <p>18 -- I don't recall -- I got his last name wrong, but he</p> <p>19 was in the position, it's sort of like the chief -- I</p> <p>20 think he was the chief nuclear officer at the time.</p> <p>21 And there were probably some other TVA -- there were</p>

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<p style="text-align: right;">Page 65</p> <p>1 certainly some other TVA folks there who were either</p> <p>2 -- accompanied us on the trip or met with us during</p> <p>3 the visit.</p> <p>4 Q. Was the TVA CEO at that trip?</p> <p>5 A. Not that I recall.</p> <p>6 Q. Do you know who the CEO was at the time?</p> <p>7 A. Actually no, I don't.</p> <p>8 Q. Do you know Bill Johnson?</p> <p>9 A. No. I may have met him, but I don't really</p> <p>10 know him.</p> <p>11 Q. Did you know he was the CEO of TVA for a</p> <p>12 period of time?</p> <p>13 A. Well, I've seen that name as CEO. And</p> <p>14 probably in some of my -- looking at some documents</p> <p>15 here.</p> <p>16 Q. Do you recall ever having any communications</p> <p>17 with Bill Johnson regarding any matters concerning</p> <p>18 TVA?</p> <p>19 A. No, I do not.</p> <p>20 Q. Are there any personnel currently at TVA</p> <p>21 that you're particularly close to?</p>	<p style="text-align: right;">Page 67</p> <p>1 specific assignments.</p> <p>2 Q. And you would know whether he worked on any</p> <p>3 licensing matters under you or not?</p> <p>4 A. Again, I don't have a particular</p> <p>5 recollection of where he was assigned within the</p> <p>6 office. As I recall, he began -- came to the Agency</p> <p>7 through our honors program and part of the honors</p> <p>8 program is it has a structured rotational assignment</p> <p>9 in different areas of the office through the year. I</p> <p>10 don't have a recollection of what those assignments</p> <p>11 were.</p> <p>12 Q. I believe you testified you were involved in</p> <p>13 the process where TVA sought withdrawal of the</p> <p>14 construction permits and later sought reinstatement of</p> <p>15 those permits. Is that correct?</p> <p>16 A. I would have supervised staff and provided</p> <p>17 some counsel with respect to legal matters related to</p> <p>18 those issues, yes.</p> <p>19 Q. Do you know whether Mr. Chandler worked on</p> <p>20 any of those issues while he was at the NRC?</p> <p>21 A. I have no -- no idea.</p>
<p style="text-align: right;">Page 66</p> <p>1 A. No. There are a few people I know but</p> <p>2 there's no one I would say I'm close to.</p> <p>3 Q. Who do you know that's presently at TVA?</p> <p>4 A. I know Joe Shea and I know Chris Chandler.</p> <p>5 But actually -- you know, I've obviously met Mr. Chin</p> <p>6 and Mr. Alif in this process.</p> <p>7 Q. And Mr. Chandler formerly worked at the NRC.</p> <p>8 Is that correct?</p> <p>9 A. Mr. Chin? Not that --</p> <p>10 Q. Mr. Chandler, not Mr. Chin.</p> <p>11 A. Chandler? Mr. Chandler did work at the NRC.</p> <p>12 Q. Did you know him when he worked at the NRC?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Did he work with you or under you</p> <p>15 when he was at the NRC?</p> <p>16 A. He would have worked under me because I was</p> <p>17 the general counsel. So all staff in the office</p> <p>18 reported to me ultimately.</p> <p>19 Q. Did he work on any adjudicatory opinions</p> <p>20 when he was at the NRC?</p> <p>21 A. I don't have any recollection of his</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Who at TVA contacted you to be an expert</p> <p>2 witness in this case?</p> <p>3 A. Initial contact was through Mr. Chandler.</p> <p>4 Q. Now, Mr. Shea worked for the NRC for a long</p> <p>5 while, did he not?</p> <p>6 A. Yes, he did.</p> <p>7 Q. And did you work with Mr. Shea while he was</p> <p>8 at the NRC?</p> <p>9 A. I would have had some interactions with him.</p> <p>10 He was in the NRC's regional office in Atlanta and I</p> <p>11 believe he also worked in the headquarters office, but</p> <p>12 I don't recall where.</p> <p>13 So I would have had some interactions with</p> <p>14 him on occasion, but nothing in particular that I can</p> <p>15 recall.</p> <p>16 Q. Okay. And he worked with NRC for 19 years.</p> <p>17 Did you work with him on any licensing matters?</p> <p>18 A. I don't recall working on any particular</p> <p>19 licensing matters with him.</p> <p>20 Q. Have you communicated with Mr. Shea since</p> <p>21 you left the NRC?</p>

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<p style="text-align: right;">Page 69</p> <p>1 A. I have had a communication with him, yes.</p> <p>2 Q. Tell me about that.</p> <p>3 A. Well, that communication has nothing to do</p> <p>4 with the dispute between Nuclear Development and</p> <p>5 Tennessee Valley Authority. He was asking me</p> <p>6 something with respecting a personnel matter involving</p> <p>7 himself.</p> <p>8 Q. While you were at the NRC, did you ever have</p> <p>9 any communication with Mr. Shea about the Bellefonte</p> <p>10 plant site?</p> <p>11 A. I have no recollection of any.</p> <p>12 Q. Well, do you recall whether Mr. Shea</p> <p>13 participated on any kind of drop-in calls with you</p> <p>14 when you were a commissioner?</p> <p>15 A. I don't have any particular recollection of</p> <p>16 who would have -- who participated in any drop-ins</p> <p>17 from TVA.</p> <p>18 Q. Did TVA have regular drop-ins with the</p> <p>19 commissioners?</p> <p>20 A. Yes. I would say perhaps about once a year.</p> <p>21 Q. Okay. You indicated -- I'm not ask you</p>	<p style="text-align: right;">Page 71</p> <p>1 TVA?</p> <p>2 A. No, I do not.</p> <p>3 Q. Have you had any discussions with former TVA</p> <p>4 personnel regarding the Bellefonte site?</p> <p>5 A. Ever?</p> <p>6 Q. Well, while you were a commissioner, did you</p> <p>7 have any communications with former TVA personnel</p> <p>8 regarding the Bellefonte site?</p> <p>9 A. I don't recall any conversations with former</p> <p>10 personnel.</p> <p>11 Q. Since you've left the NRC, have you had any</p> <p>12 conversations or communications with any former TVA</p> <p>13 personnel regarding the Bellefonte site?</p> <p>14 A. No.</p> <p>15 Q. Have you ever communicated with any member</p> <p>16 of the TVA board of directors?</p> <p>17 A. No.</p> <p>18 Q. Ever?</p> <p>19 A. Right. I have no recollection of a -- such</p> <p>20 communication.</p> <p>21 Q. You have no recollection of meeting with Mr.</p>
<p style="text-align: right;">Page 70</p> <p>1 about the detail of it -- but Mr. Shea, did he call</p> <p>2 you regarding a personnel matter after you left the</p> <p>3 NRC?</p> <p>4 A. Yes, he contacted me.</p> <p>5 Q. Okay. Do you consider yourself --</p> <p>6 A. He contacted me by e-mail, and then we spoke</p> <p>7 by phone.</p> <p>8 Q. Do you consider yourself a friend of Mr.</p> <p>9 Shea's?</p> <p>10 A. No.</p> <p>11 Q. Do you consider yourself a friend of Mr.</p> <p>12 Chandler's?</p> <p>13 A. No.</p> <p>14 Q. Are you personally acquainted with any other</p> <p>15 current TVA personnel?</p> <p>16 MR. LEMBKE: Other than Mr. Chandler and Mr.</p> <p>17 Ayliffe?</p> <p>18 MR. O'REAR: Yes, I'm not including them.</p> <p>19 THE WITNESS: Current personnel, no.</p> <p>20 BY MR. O'REAR:</p> <p>21 Q. Do you know the current general counsel of</p>	<p style="text-align: right;">Page 72</p> <p>1 Shea to discuss the Bellefonte site in June of 2017?</p> <p>2 A. No, I don't recall that.</p> <p>3 Q. Did you have any communications with anyone</p> <p>4 at TVA while you were at the NRC about the lawsuit,</p> <p>5 this lawsuit between Nuclear Development and TVA?</p> <p>6 A. Repeat the question, please.</p> <p>7 Q. While you were at the NRC, did you have any</p> <p>8 communications with anyone at TVA about this lawsuit?</p> <p>9 A. I don't recall any communications with TVA</p> <p>10 folks regarding this lawsuit while I was at NRC.</p> <p>11 Q. And other than your conversations with Mr.</p> <p>12 Ayliffe and Mr. Chandler -- Mr. Chandler, excuse me --</p> <p>13 have you had any communications since you left the NRC</p> <p>14 with anyone at TVA concerning this lawsuit? I believe</p> <p>15 you said Mr. Chandler contacted you.</p> <p>16 A. It was Mr. Chandler who basically introduced</p> <p>17 me to Mr. Ayliffe.</p> <p>18 Q. Anyone else?</p> <p>19 A. No.</p> <p>20 Q. Okay. If you would look in your stack of</p> <p>21 exhibits -- and I don't think all of these are going</p>

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<p style="text-align: right;">Page 73</p> <p>1 to be in exact order -- but I would like for you to</p> <p>2 find an exhibit that is a pleading in the case</p> <p>3 captioned: Defendant's Unopposed Motion to Amend</p> <p>4 Scheduling Order.</p> <p>5 A. Yes, I have it.</p> <p>6 Q. All right.</p> <p>7 MR. O'REAR: Now, would you mark that</p> <p>8 Exhibit 200, please?</p> <p>9 (Burns Exhibit No. 200 was marked for</p> <p>10 identification.)</p> <p>11 THE WITNESS: Okay.</p> <p>12 BY MR. O'REAR:</p> <p>13 Q. And I've asked counsel to mark their own</p> <p>14 copies as 200 also. Okay.</p> <p>15 We may need to refer to this, but let me ask</p> <p>16 you these questions first. When did Mr. Chandler call</p> <p>17 you about being an expert witness in this case?</p> <p>18 A. Well, he first e-mailed me and he e-mailed</p> <p>19 me, I think it was about February 14th, 2020.</p> <p>20 Q. Okay. What did his e-mail say?</p> <p>21 A. He asked whether I might be available to</p>	<p style="text-align: right;">Page 75</p> <p>1 the pocket until the very end of February.</p> <p>2 And then after -- so after February 14th,</p> <p>3 when he received my reply he said, well, we can try to</p> <p>4 talk when you come back. You know, basically I was</p> <p>5 not going to be easily reachable.</p> <p>6 Q. Okay. Did you have any communications with</p> <p>7 him before you -- before you went on your trip --</p> <p>8 strike that.</p> <p>9 So he sent you an e-mail February the 14th,</p> <p>10 and then there was a follow up call on that day where</p> <p>11 you told him you were out of pocket for two weeks?</p> <p>12 A. No, no. It was not a follow up call.</p> <p>13 I returned -- I replied to his e-mail. I</p> <p>14 called him. And so, yeah, I did not speak to him.</p> <p>15 First I said, I'm gone for the next two weeks. Happy</p> <p>16 to chat when I get back.</p> <p>17 Q. But did you accept the engagement on</p> <p>18 February the 14th during this exchange of e-mails?</p> <p>19 A. No, I said I'd be happy to talk. And get --</p> <p>20 you know, obtain more information about what, you</p> <p>21 know, why he was contacting me.</p>
<p style="text-align: right;">Page 74</p> <p>1 discuss a matter. I don't recall specifically how</p> <p>2 detailed he was in terms of this, but I think he</p> <p>3 identified it, wanted to discuss a matter that TVA was</p> <p>4 in litigation over.</p> <p>5 Q. So did he advise you of -- of the</p> <p>6 litigation, who it involved and what the subject was?</p> <p>7 A. I don't recall the content of his e-mail.</p> <p>8 Q. Okay. And that was, you say, February the</p> <p>9 14th?</p> <p>10 A. I think February the 14th.</p> <p>11 Q. 2020, this year?</p> <p>12 A. 2020.</p> <p>13 Q. All right. Then you had a conversation with</p> <p>14 him after that?</p> <p>15 A. I did. When he sent the e-mail on</p> <p>16 February 14th, I was sitting basically in the</p> <p>17 departure lounge at Dulles Airport on my way to France</p> <p>18 because I had an obligation with NEA to teach in their</p> <p>19 nuclear law program for the week, and then my wife and</p> <p>20 I were going to take another week vacation. So I was</p> <p>21 going to be out of the country and basically out of</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Okay. And, so, on that day you didn't know</p> <p>2 anything about the lawsuit at all. Is that right?</p> <p>3 A. Again, I don't recall the content</p> <p>4 specifically of his e-mail. He may have described in</p> <p>5 general that, you know, there was the issue pending.</p> <p>6 So I think it's fair to say I understood that there</p> <p>7 was a lawsuit at that time. But more detail than</p> <p>8 that, I did not have at that time.</p> <p>9 Q. Okay. Do you have the e-mail there?</p> <p>10 A. I --</p> <p>11 Q. Is it in there?</p> <p>12 A. I don't know if I still have it or not.</p> <p>13 Q. Could you find it?</p> <p>14 MR. LEMBKE: Wait one minute. This is</p> <p>15 inappropriate because you have not served any subpoena</p> <p>16 on him or a document request related to it. So we're</p> <p>17 not going to engage in on the spot document discovery.</p> <p>18 MR. O'REAR: I'm just asking him if he has</p> <p>19 it there, if it will refresh his recollection.</p> <p>20 MR. LEMBKE: Mr. Burns, let's do -- that's</p> <p>21 inappropriate in a deposition. If you want to present</p>

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<p style="text-align: right;">Page 77</p> <p>1 a document to him to refresh his recollection you may,</p> <p>2 but it's not appropriate to have him start rummaging</p> <p>3 through files looking for something to refresh his</p> <p>4 recollection.</p> <p>5 MR. O'REAR: I'm not asking him to rummage.</p> <p>6 If he's got it there, he can answer the question. I</p> <p>7 think it would be helpful.</p> <p>8 MR. LEMBKE: Let's proceed with the</p> <p>9 question.</p> <p>10 MR. O'REAR: Are you telling him not to do</p> <p>11 that?</p> <p>12 MR. LEMBKE: I don't think that's</p> <p>13 appropriate. He has not been served a subpoena nor</p> <p>14 has there been any document request for that</p> <p>15 information.</p> <p>16 MR. O'REAR: I understand that. But I --</p> <p>17 MR. LEMBKE: And so I don't think that's</p> <p>18 appropriate to engage in discovery on the spot.</p> <p>19 So I'm going to tell him if you want to</p> <p>20 serve a subpoena or document request, we'll respond</p> <p>21 appropriately. But we're not going to do it without</p>	<p style="text-align: right;">Page 79</p> <p>1 e-mail. Certainly by the time I was returning from</p> <p>2 France or it was actually from Italy at the time a few</p> <p>3 days before we had our phone call, I understood that.</p> <p>4 He did transmit to me in another e-mail</p> <p>5 which is more likely -- it's probably around the 27th</p> <p>6 or 28th of February about the time I came back, he</p> <p>7 provided me, I think, some of the initial -- some of</p> <p>8 the pleadings in the case in terms of TVA's motion to</p> <p>9 dismiss and the ND's reply.</p> <p>10 Q. So you were on this trip and returned on</p> <p>11 February 28th?</p> <p>12 A. I believe it was the 28th.</p> <p>13 Q. And if he sent you materials in the lawsuit</p> <p>14 on the 27th or the 28th by e-mail?</p> <p>15 A. Correct.</p> <p>16 Q. What did he send you at that time?</p> <p>17 A. My recollection is he sent me the -- I think</p> <p>18 TVA's motion -- the defendant's motion to dismiss and</p> <p>19 then the plaintiff's or ND's reply to that.</p> <p>20 Q. And did Mr. Chandler say anything to you in</p> <p>21 any of these e-mails about what he wanted testimony</p>
<p style="text-align: right;">Page 78</p> <p>1 such a request.</p> <p>2 MR. O'REAR: I'm not asking for the</p> <p>3 document. I'm asking him to look at the e-mail so</p> <p>4 that he can answer the question.</p> <p>5 MR. LEMBKE: He is not -- we're not going to</p> <p>6 do that today.</p> <p>7 MR. O'REAR: All right.</p> <p>8 BY MR. O'REAR:</p> <p>9 Q. Do you agree with that, Mr. Burns?</p> <p>10 A. Yes.</p> <p>11 Q. You're not going to do that?</p> <p>12 A. Correct.</p> <p>13 Q. Okay.</p> <p>14 All right. When you had this initial e-mail</p> <p>15 exchange with Mr. Chandler, did you know Nuclear</p> <p>16 Development was in a lawsuit with TVA?</p> <p>17 A. I think I did know that, yes.</p> <p>18 Q. Did he tell you that he was calling you</p> <p>19 about a lawsuit between Nuclear Development and TVA,</p> <p>20 or he was contacting you about that?</p> <p>21 A. Again, I don't recall the specifics in that</p>	<p style="text-align: right;">Page 80</p> <p>1 on?</p> <p>2 A. At that point it was a question whether I</p> <p>3 would be willing to discuss it.</p> <p>4 Q. But he didn't say what he was seeking your</p> <p>5 opinion on?</p> <p>6 A. Well, I think he wanted to discuss it and I</p> <p>7 think he was looking for my reaction to it.</p> <p>8 Q. Thank you.</p> <p>9 A. Well, we weren't discussing -- as I say I</p> <p>10 hesitate to say we were discussing at that particular</p> <p>11 point whether or not I would be willing to serve as an</p> <p>12 expert.</p> <p>13 Q. And you didn't know what you were going to</p> <p>14 be serving as an expert on, on what subject?</p> <p>15 A. Well, by implication the issues that are the</p> <p>16 back and forth in that set of pleadings. It's on the</p> <p>17 issue of whether or not TVA could proceed with the</p> <p>18 transfer of the site without a construction -- with</p> <p>19 the construction permit authorization having also been</p> <p>20 approved.</p> <p>21 Q. And was that communicated to you by Mr.</p>

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<p style="text-align: right;">Page 81</p> <p>1 Chandler or you're saying you learned that only by</p> <p>2 implication?</p> <p>3 A. Well, I certainly saw it there. He may have</p> <p>4 highlighted that. I don't have a specific</p> <p>5 recollection of the contents. These are relatively</p> <p>6 short e-mails.</p> <p>7 Q. And, so, when did you accept that</p> <p>8 engagement?</p> <p>9 A. I think I accepted the engagement early the</p> <p>10 next week. So I don't know what the dates are on</p> <p>11 that. Somewhere from March 3rd to fifth.</p> <p>12 Q. Well, let's look at Exhibit 200 that you</p> <p>13 have before you.</p> <p>14 A. All right.</p> <p>15 Q. You have it there?</p> <p>16 A. I have it.</p> <p>17 Q. Okay. If you would look on the second page,</p> <p>18 Paragraph 4. It says, "On or about February 14, 2020,</p> <p>19 TVA identified Stephen G. Burns as the best person to</p> <p>20 serve as its expert in this field." Do you see that</p> <p>21 sentence?</p>	<p style="text-align: right;">Page 83</p> <p>1 first contacted Mr. Burns, TVA learned that Mr. Burns</p> <p>2 was on a trip to France from February 14 through</p> <p>3 February 28, 2020." Do you see that?</p> <p>4 A. Yes, I do.</p> <p>5 MR. LEMBKE: Same objection.</p> <p>6 BY MR. O'REAR:</p> <p>7 Q. Is that a true statement?</p> <p>8 A. It what a true statement?</p> <p>9 Q. That when TVA contacted you, that TVA</p> <p>10 learned that you were on a trip from France -- to</p> <p>11 France from February 14th to February 28th?</p> <p>12 MR. LEMBKE: Objection, lack of foundation.</p> <p>13 BY MR. O'REAR:</p> <p>14 Q. You can answer.</p> <p>15 A. It's essentially correct except for the fact</p> <p>16 the that I also went to Italy.</p> <p>17 Q. Okay. Turn to the next page, Paragraph 6.</p> <p>18 It says, "On March 2nd, 2020, Mr. Burns agreed to</p> <p>19 serve as an expert for TVA."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p>
<p style="text-align: right;">Page 82</p> <p>1 MR. LEMBKE: Object to the form, lack of</p> <p>2 foundation.</p> <p>3 BY MR. O'REAR:</p> <p>4 Q. Do you see that?</p> <p>5 MR. LEMBKE: Same objection.</p> <p>6 BY MR. O'REAR:</p> <p>7 Q. Do you see that?</p> <p>8 You can answer the question.</p> <p>9 MR. LEMBKE: Same objection.</p> <p>10 BY MR. O'REAR:</p> <p>11 Q. Do you see that sentence?</p> <p>12 MR. LEMBKE: Same objection.</p> <p>13 You can answer, Mr. Burns.</p> <p>14 THE WITNESS: Well, I see the sentence on</p> <p>15 the document. Yes.</p> <p>16 BY MR. O'REAR:</p> <p>17 Q. All right. And do you know anything about</p> <p>18 how TVA identified you as the best person to serve as</p> <p>19 an expert in this field?</p> <p>20 A. No, I do not.</p> <p>21 Q. Look at Paragraph 5. It says, "When TVA</p>	<p style="text-align: right;">Page 84</p> <p>1 MR. LEMBKE: Same objection.</p> <p>2 BY MR. O'REAR:</p> <p>3 Q. Is that a true statement?</p> <p>4 A. I think it is. As I say, I don't have my</p> <p>5 notes in front of me. But as I said earlier, my</p> <p>6 agreement was, you know, early in that week of</p> <p>7 following my return from your Europe.</p> <p>8 Q. But with that as a true statement, on</p> <p>9 March 2nd, 2020, what did you agree to do for TVA?</p> <p>10 A. I agreed to prepare an expert report.</p> <p>11 Q. All right.</p> <p>12 A. I prepared the expert report.</p> <p>13 Q. On what?</p> <p>14 A. On the issues -- well, on the issues that</p> <p>15 are covered in my expert report. So whether or not I</p> <p>16 believe, based on my experience and analysis that a</p> <p>17 transfer of the site without a concurrent transfer or</p> <p>18 authorization to transfer the construction permit was</p> <p>19 a valid approach.</p> <p>20 Q. And had you formed that opinion on March the</p> <p>21 2nd, 2020?</p>

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<p style="text-align: right;">Page 85</p> <p>1 A. Well, I had -- again, based on my experience</p> <p>2 -- long experience at the NRC and my understanding of</p> <p>3 how things should work and from the position of a</p> <p>4 regulator, that was my essential conclusion.</p> <p>5 Now, as -- when I worked through, you know,</p> <p>6 documentation, I read other things that were related</p> <p>7 to this, you know, I looked at those things to see</p> <p>8 whether anything changed my mind and it did -- they</p> <p>9 did not.</p> <p>10 Q. Did you enter into a written engagement with</p> <p>11 TVA?</p> <p>12 A. I believe, yeah, I believe-- I believe there</p> <p>13 is or at least an e-mail exchange with respect to an</p> <p>14 agreement to serve.</p> <p>15 Q. Who was that communication with at TVA?</p> <p>16 A. That would have been with Mr. Ayliffe.</p> <p>17 And I probably also then -- there was</p> <p>18 documentation that their administrative officers would</p> <p>19 have sent me.</p> <p>20 Q. Okay.</p> <p>21 A. That did not occur until at least later that</p>	<p style="text-align: right;">Page 87</p> <p>1 this deposition?</p> <p>2 A. That's the rate.</p> <p>3 Q. You also issued a supplement to your report.</p> <p>4 Is that correct?</p> <p>5 A. That is correct.</p> <p>6 Q. Who asked you to do that?</p> <p>7 A. TVA.</p> <p>8 Q. Okay. What was that assignment?</p> <p>9 Well, who at TVA -- who at TVA?</p> <p>10 A. Well, counsel.</p> <p>11 Q. Which counsel?</p> <p>12 A. Well, it would have been Mr. Ayliffe, Mr.</p> <p>13 Chandler in consultation with Mr. Lembke.</p> <p>14 Q. And what were you asked to do in this second</p> <p>15 engagement?</p> <p>16 A. In the supplemental report?</p> <p>17 Q. Yes.</p> <p>18 A. I addressed matters that were raised by Mr.</p> <p>19 Matthews in his the deposition, which -- which were</p> <p>20 not -- would not have come up in my original report</p> <p>21 which seemed to need some addressing or rebuttal.</p>
<p style="text-align: right;">Page 86</p> <p>1 week.</p> <p>2 Q. The documentation engagement?</p> <p>3 A. Formality.</p> <p>4 Q. Was that a written engagement agreement?</p> <p>5 A. There was some -- there was some written</p> <p>6 document, yes, that I provided to them.</p> <p>7 Q. Okay.</p> <p>8 A. I don't have that here and I don't recall</p> <p>9 the specifics of how it's written.</p> <p>10 Q. Do you recall anything about that document</p> <p>11 that defines the scope of your work?</p> <p>12 A. Well, again, I don't have a specific</p> <p>13 recollection of the contents of the document. The</p> <p>14 scope of the work is as I described it and as set</p> <p>15 forth in my expert report.</p> <p>16 Q. And your rate -- I believe you state in your</p> <p>17 report is \$500 per hour?</p> <p>18 A. That's correct.</p> <p>19 Q. And is that for all of your time? I mean is</p> <p>20 it -- you have no different rate for different</p> <p>21 functions such as this deposition or preparation for</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. Did you enter another engagement letter --</p> <p>2 A. No.</p> <p>3 Q. -- for that assignment?</p> <p>4 A. No.</p> <p>5 Q. Did you contact the -- is there an ethics</p> <p>6 office at the NRC?</p> <p>7 A. Yes. In fact as general counsel, I'm the</p> <p>8 designated Agency ethics officer.</p> <p>9 Q. You were when you were general counsel?</p> <p>10 A. When I was general counsel.</p> <p>11 Q. Is the current general counsel the</p> <p>12 designated Agency ethics officer?</p> <p>13 A. Yes.</p> <p>14 Q. Who is that? `</p> <p>15 A. Marian Zobler, Z-O-B-L-E-R.</p> <p>16 Q. Did you contact her office regarding any</p> <p>17 advice or consent regarding this request for an</p> <p>18 engagement by TVA?</p> <p>19 A. No, I did not.</p> <p>20 Q. Did you research whether or not you were</p> <p>21 precluded from serving as an expert witness in this</p>

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<p style="text-align: right;">Page 89</p> <p>1 matter based on any federal conflicts, statutes or NRC</p> <p>2 regulations?</p> <p>3 A. I don't know what you mean by research.</p> <p>4 Q. Well, did you check into it? Did you</p> <p>5 examine that question?</p> <p>6 A. I think I considered that question. I did</p> <p>7 not undertake extensive research on it.</p> <p>8 Q. Are you familiar -- you're familiar I guess</p> <p>9 since you were the ethics officer at one time, you're</p> <p>10 familiar with Title 18, Section 207 of the United</p> <p>11 States Code? It deals with restrictions on former</p> <p>12 officers and employees of federal agencies from</p> <p>13 accepting certain assignments, engagements after they</p> <p>14 leave an Agency?</p> <p>15 A. No, I cannot recite to you the text of the</p> <p>16 statute.</p> <p>17 Q. Are you familiar with it, having served in</p> <p>18 that capacity --</p> <p>19 A. I'm familiar with it but I cannot recite the</p> <p>20 text of it.</p> <p>21 Q. Can you say one way or the other that that</p>	<p style="text-align: right;">Page 91</p> <p>1 off.</p> <p>2 Q. Well, I'm trying to clarify your answer.</p> <p>3 The operative factor for you was whether you</p> <p>4 personally conducted any decision making regarding</p> <p>5 Bellefonte or Nuclear Development?</p> <p>6 A. Correct.</p> <p>7 Q. And you answered that question that you did</p> <p>8 not participate in any decision making?</p> <p>9 A. That is correct.</p> <p>10 Q. And that is the factor that led you to</p> <p>11 conclude that you did not have a conflict under any of</p> <p>12 the statutes. Is that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Now, you agreed earlier that the NRC is an</p> <p>15 independent regulatory Agency, correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And that TVA is one of the organizations it</p> <p>18 regulates, correct?</p> <p>19 A. That is correct.</p> <p>20 Q. You agree that the -- that Nuclear</p> <p>21 Development filed its application for approval from</p>
<p style="text-align: right;">Page 90</p> <p>1 statute imposes restrictions on former federal</p> <p>2 employees from accepting certain types of engagements</p> <p>3 after leaving federal employment?</p> <p>4 A. I would need to look at the statute itself</p> <p>5 before I answer that question.</p> <p>6 Q. Did you consider the obligations under that</p> <p>7 statute before you accepted this engagement?</p> <p>8 A. I considered the obligations, whether I had</p> <p>9 -- would have had a conflict regarding prior service</p> <p>10 and I did not believe I did.</p> <p>11 Q. Okay. And what are the factors that you</p> <p>12 considered as to whether or not you had a conflict or</p> <p>13 not?</p> <p>14 A. The factors I would have considered is</p> <p>15 whether I had had any decision making with respect to</p> <p>16 Nuclear Development and TVA with respect to this</p> <p>17 matter. And I did not.</p> <p>18 Q. And so an operative question for you is</p> <p>19 whether you had any -- you conducted any decision</p> <p>20 making. Is that correct?</p> <p>21 A. Would you repeat that, please? It got cut</p>	<p style="text-align: right;">Page 92</p> <p>1 the NRC while you were the Commissioner, correct?</p> <p>2 A. That is correct.</p> <p>3 Q. And you had a personal meeting with</p> <p>4 representatives of Nuclear Development at which you</p> <p>5 discussed their plan to pursue an application for</p> <p>6 transfer of the construction permits, correct?</p> <p>7 MR. LEMBKE: Object to the form, lack of</p> <p>8 foundation. That misstates his prior testimony about</p> <p>9 that meeting.</p> <p>10 BY MR. O'REAR:</p> <p>11 Q. You can answer.</p> <p>12 A. What I said before was they came in, they</p> <p>13 dropped in, they provided general information about</p> <p>14 what their intentions were.</p> <p>15 Q. And --</p> <p>16 A. That was not a meeting at which either a</p> <p>17 commissioner would have endorsed, would have supported</p> <p>18 or objected to what they were doing. It's purely</p> <p>19 informational. That's the nature of the drop-in</p> <p>20 meeting.</p> <p>21 It's not a decision making meeting and it is</p>

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<p style="text-align: right;">Page 93</p> <p>1 not something in which -- as I said before, in which</p> <p>2 the Commission itself was taking particular action.</p> <p>3 Q. But is it correct that they did inform you</p> <p>4 that they intended to pursue an application for</p> <p>5 transfer of the construction permits?</p> <p>6 MR. LEMBKE: Form, lack of foundation,</p> <p>7 misstates prior testimony.</p> <p>8 BY MR. O'REAR:</p> <p>9 Q. You may answer.</p> <p>10 A. Actually I don't recall the question now.</p> <p>11 Q. The question is: Were you informed at that</p> <p>12 meeting by representatives of Nuclear Development that</p> <p>13 they intended to pursue an application with the NRC</p> <p>14 for consent of the transfer of the construction</p> <p>15 permits to Nuclear Development?</p> <p>16 MR. LEMBKE: Same objection.</p> <p>17 THE WITNESS: We were -- I was informed at</p> <p>18 that meeting that they intended to pursue the</p> <p>19 completion of the Bellefonte project with the hope of</p> <p>20 turning it into an operating reactor site.</p> <p>21 BY MR. O'REAR:</p>	<p style="text-align: right;">Page 95</p> <p>1 what I have been engaged in here.</p> <p>2 That would suggest that any federal employee</p> <p>3 who leaves federal service could never work on</p> <p>4 anything that it comes within the scope of the</p> <p>5 regulatory Agency's authority, and that's simply</p> <p>6 wrong.</p> <p>7 Q. Well, not necessarily.</p> <p>8 Are you saying that a U.S. attorney could</p> <p>9 leave the U.S. Attorney's Office and defend a party on</p> <p>10 an investigation he had participated in?</p> <p>11 MR. LEMBKE: Objection.</p> <p>12 BY MR. O'REAR:</p> <p>13 Q. Are you saying that?</p> <p>14 MR. LEMBKE: Object to the form.</p> <p>15 First I move to strike the statement "not</p> <p>16 necessarily."</p> <p>17 Second of all, I object on lack of</p> <p>18 foundation for this question.</p> <p>19 MR. O'REAR: Well, his answer was</p> <p>20 nonresponsive and I was asking him if it covered -- if</p> <p>21 it covered the scenario I just mentioned.</p>
<p style="text-align: right;">Page 94</p> <p>1 Q. And would that necessarily have involved</p> <p>2 receiving transfer of the construction permit?</p> <p>3 A. They would have had --</p> <p>4 MR. LEMBKE: Same objection.</p> <p>5 BY MR. O'REAR:</p> <p>6 Q. Go and answer, please.</p> <p>7 A. They would have had to get NRC approval,</p> <p>8 that's correct.</p> <p>9 Q. Did you consider whether or not you had a</p> <p>10 conflict because the NRC is currently regulating TVA</p> <p>11 and was regulating while you were there?</p> <p>12 MR. LEMBKE: Objection, vague.</p> <p>13 You can answer, if you understand it.</p> <p>14 THE WITNESS: The question was again,</p> <p>15 whether -- you have to repeat the question.</p> <p>16 BY MR. O'REAR:</p> <p>17 Q. Did you consider whether you had a conflict</p> <p>18 because the NRC is currently regulating TVA and was</p> <p>19 regulating TVA when you were there?</p> <p>20 A. That I was -- I probably considered that. I</p> <p>21 do not believe that it any bar -- poses any bar to</p>	<p style="text-align: right;">Page 96</p> <p>1 MR. LEMBKE: His answer was certainly</p> <p>2 responsive to the question.</p> <p>3 I don't have any idea what the basis for</p> <p>4 that is.</p> <p>5 MR. O'REAR: Well, the basis for is that</p> <p>6 it's a completely overbroad statement. I'm asking him</p> <p>7 whether or not there would be exceptions to that</p> <p>8 statement.</p> <p>9 MR. LEMBKE: Same objection.</p> <p>10 BY MR. O'REAR:</p> <p>11 Q. All right. Mr. Burns, did you check with</p> <p>12 the District of Columbia Bar regarding whether or not</p> <p>13 you had a conflict in accepting this matter?</p> <p>14 A. No, I did not.</p> <p>15 Q. Can you tell us what your total fees have</p> <p>16 been to date that you charged for your work for TVA?</p> <p>17 A. I've received payment of approximately</p> <p>18 \$25,000, and then really had not done any work -- and</p> <p>19 that was in May. And I really haven't done any more</p> <p>20 work since the last few weeks.</p> <p>21 So, I believe I've sort of logged another 20</p>

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<p style="text-align: right;">Page 97</p> <p>1 to 25 hours. But have not, you know, sent the invoice</p> <p>2 in as of yet.</p> <p>3 Q. Okay.</p> <p>4 MR. LEMBKE: Caine, can we go off the record</p> <p>5 a minute to talk about lunch plans?</p> <p>6 MR. O'REAR: Sure. Well, let me finish this</p> <p>7 line of questions, please.</p> <p>8 BY MR. O'REAR:</p> <p>9 Q. So you have received payment of \$25,000,</p> <p>10 that would be partial payment, correct?</p> <p>11 A. Correct.</p> <p>12 Q. That would have been for 50 hours of work.</p> <p>13 Is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. And then you say you've logged in an</p> <p>16 additional 20 to 25 hours of work?</p> <p>17 A. Correct.</p> <p>18 Q. So if that is billed, then that would be an</p> <p>19 additional 12,000 or so dollars, correct?</p> <p>20 A. Something like that, yes.</p> <p>21 Q. So your charges to this date have been</p>	<p style="text-align: right;">Page 99</p> <p>1 A. Essentially it's an enforcement action above</p> <p>2 a notice of violation or for reactors now, in the</p> <p>3 reactor oversight process, that goes beyond the</p> <p>4 assessment process within that context.</p> <p>5 So for the most part what that means is</p> <p>6 civil penalty or orders, as I was discussing before</p> <p>7 enforcement orders.</p> <p>8 Q. Let's say over the last 20 years, have you</p> <p>9 been involved in any escalated enforcement actions</p> <p>10 against TVA?</p> <p>11 A. Well, as a commissioner, no, I don't believe</p> <p>12 that any of those -- and that would not be common</p> <p>13 anyway, that the initiation of the action would come</p> <p>14 to the Commission. So as a commissioner since 2014,</p> <p>15 no.</p> <p>16 It is possible. I just I don't have a</p> <p>17 recollection of what actions TVA may have been subject</p> <p>18 to in, say the last 20 years. You know, again --</p> <p>19 Q. You --</p> <p>20 A. Go ahead.</p> <p>21 MR. LEMBKE: No, no. You should finish.</p>
<p style="text-align: right;">Page 98</p> <p>1 roughly \$37,000?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. All right. We can go off the record.</p> <p>4 (Whereupon, a recess ensued.)</p> <p>5 MR. O'REAR: Back on the record.</p> <p>6 BY MR. O'REAR:</p> <p>7 Q. Mr. Burns, were you involved personally in</p> <p>8 any enforcement actions against TVA other than the</p> <p>9 ones you previously mentioned in the deposition?</p> <p>10 A. I didn't -- what ones in my deposition? I'm</p> <p>11 sorry. Other than --</p> <p>12 Q. You mentioned some matters that you were</p> <p>13 involved in the mid '90s regarding enforcement actions</p> <p>14 against TVA?</p> <p>15 A. Yeah, or the mid 1980s.</p> <p>16 Q. The mid 1980s?</p> <p>17 A. Yeah, I'm not aware of any.</p> <p>18 Q. Is there such a term as "escalated</p> <p>19 enforcement actions" by the NRC?</p> <p>20 A. Yes, there is.</p> <p>21 Q. What does that mean?</p>	<p style="text-align: right;">Page 100</p> <p>1 Finish your answer.</p> <p>2 THE WITNESS: As I said before, as both</p> <p>3 deputy general counsel and as general counsel, you</p> <p>4 have responsibility for the supervision of legal staff</p> <p>5 who are providing advice, counsel and representation</p> <p>6 to the NRC technical staff. And it is, you know, it</p> <p>7 is conceivable that I was briefed on -- on some</p> <p>8 matters that might have arisen regarding TVA or not.</p> <p>9 I just don't have any recollection.</p> <p>10 BY MR. O'REAR:</p> <p>11 Q. Were you involved in the NRC citation</p> <p>12 alleging dozens of nuclear safety violations at the</p> <p>13 Watts Bar nuclear plant by TVA?</p> <p>14 MR. LEMBKE: Object to the form, lack of</p> <p>15 foundation.</p> <p>16 MR. O'REAR: I'm asking if he was involved.</p> <p>17 MR. LEMBKE: Well, you're assuming there is</p> <p>18 such a thing.</p> <p>19 BY MR. O'REAR:</p> <p>20 Q. Was there?</p> <p>21 A. I don't know what time frame you're talking</p>

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<p style="text-align: right;">Page 101</p> <p>1 about.</p> <p>2 Q. Well, I'm talking about allegedly in 2015</p> <p>3 regarding pressurized water levels rising</p> <p>4 uncontrollably that the NRC citation assessed against</p> <p>5 TVA alleging dozens of nuclear safety violations.</p> <p>6 Were you involved in that?</p> <p>7 A. No, I was not involved. As a commissioner</p> <p>8 that would have been something undertaken by the</p> <p>9 staff.</p> <p>10 Q. And do you know whether or not that matter</p> <p>11 it still pending before the NRC?</p> <p>12 A. I do not know. I don't know the status of</p> <p>13 it. I mean, typically when you issue a citation and</p> <p>14 given that it was done in 2015, you would have been --</p> <p>15 required corrective action of the licensee and that</p> <p>16 would be carried out. But I'm not aware of the actual</p> <p>17 status of that.</p> <p>18 Q. Were you involved in the NRC citation to TVA</p> <p>19 for violations of whistleblower protection for nuclear</p> <p>20 workers at the Sequoyah and Watts Bar plant?</p> <p>21 A. And when was that?</p>	<p style="text-align: right;">Page 103</p> <p>1 A. And when was this?</p> <p>2 Q. I believe it was in 2018.</p> <p>3 A. I was not involved in it, no.</p> <p>4 Q. Were you aware of it?</p> <p>5 A. I don't have any particular recollection of</p> <p>6 it.</p> <p>7 Q. Okay. And do you know whether it was</p> <p>8 pending when you left the NRC?</p> <p>9 A. I don't know what the status was when I</p> <p>10 left.</p> <p>11 Q. Other than what you've told us so far, can</p> <p>12 you identify any escalated enforcement actions against</p> <p>13 TVA regarding its nuclear plants that you were</p> <p>14 involved in?</p> <p>15 A. Well, my only specific recollection is from</p> <p>16 -- again, from the 1980s when I was in the division</p> <p>17 that was responsible for leading staff on enforcement</p> <p>18 matters, and I believe there was an order issued to</p> <p>19 TVA with respect to having an assessment of what we</p> <p>20 can now call safety culture. Basically, the</p> <p>21 employees -- the environment for employees.</p>
<p style="text-align: right;">Page 102</p> <p>1 Q. 2015 -- '15 to '18.</p> <p>2 A. I have awareness that it occurred but I was</p> <p>3 not involved in that -- undertaking that enforcement</p> <p>4 action.</p> <p>5 Q. Okay. What -- how are you aware of it?</p> <p>6 A. Well, the staff informs the Commission of</p> <p>7 significant actions -- of significant enforcement</p> <p>8 actions it may take.</p> <p>9 Q. Did the staff likewise inform the Commission</p> <p>10 of the safety violations at Watts Bar that we</p> <p>11 previously discussed?</p> <p>12 A. I don't have a particular recollection of</p> <p>13 that.</p> <p>14 Q. Do you know whether the whistleblower</p> <p>15 violation matter is still pending before the NRC?</p> <p>16 A. I don't know what might be pending or not.</p> <p>17 Q. Was it pending when you left the NRC?</p> <p>18 A. I don't have any particular recollection.</p> <p>19 Q. Were you involved in the citation alleging</p> <p>20 violation by TVA corporate management for</p> <p>21 discrimination against a Sequoyah employee?</p>	<p style="text-align: right;">Page 104</p> <p>1 But that's the only one I have a specific</p> <p>2 recollection of.</p> <p>3 Q. Okay. All right. Let's take a lunch break.</p> <p>4 MR. LEMBKE: All right. Why don't we plan</p> <p>5 to be back around 11:50 Central Time, 12:50 Eastern?</p> <p>6 MR. O'REAR: Okay.</p> <p>7 (Whereupon, a recess ensued.)</p> <p>8 (Afternoon session.)</p> <p>9 BY MR. O'REAR:</p> <p>10 Q. Mr. Burns, we're coming back from a</p> <p>11 30-minute lunch break.</p> <p>12 Did you review any of the exhibits during</p> <p>13 the break to prepare for your testimony after lunch?</p> <p>14 A. No, I did not look at any of the exhibits.</p> <p>15 Q. Okay. Now, we've identified Exhibit 199</p> <p>16 which was your original report, correct?</p> <p>17 A. Correct.</p> <p>18 Q. You have that before you.</p> <p>19 Later in your stack I've got your supplement</p> <p>20 to the report marked. We'll identify that as 201.</p> <p>21 (Burns Exhibit No. 201 was marked for</p>

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<p style="text-align: right;">Page 105</p> <p>1 identification.)</p> <p>2 BY MR. O'REAR:</p> <p>3 Q. But I don't think you need to dig it out</p> <p>4 right now.</p> <p>5 But let me ask you this about both reports.</p> <p>6 Did you write both of those reports?</p> <p>7 A. Yes, I did.</p> <p>8 Q. Were any part of those reports written by</p> <p>9 someone else?</p> <p>10 A. No.</p> <p>11 Q. Did you have any research assistance on</p> <p>12 these reports?</p> <p>13 A. No.</p> <p>14 Q. You did all the research yourself?</p> <p>15 A. Yes, I mean TVA provided some documents, you</p> <p>16 know, exhibits in this litigation. But I -- otherwise</p> <p>17 the research was mine.</p> <p>18 Q. Okay. And did they provide documents that</p> <p>19 you requested or did they just say, well, we want you</p> <p>20 to consider these documents that we're provided?</p> <p>21 A. It's a combination of both. They provided</p>	<p style="text-align: right;">Page 107</p> <p>1 else quite honestly.</p> <p>2 Q. Okay. Well, I'm not sure I understood your</p> <p>3 answer.</p> <p>4 You don't recall anything being given to you</p> <p>5 by TVA counsel other than the lawsuit depositions,</p> <p>6 exhibits and pleadings. Is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. All the other matters that you've listed in</p> <p>9 your reports that you considered were obtained by your</p> <p>10 own research?</p> <p>11 A. Correct.</p> <p>12 Q. Did you speak with any TVA personnel other</p> <p>13 than Mr. Lembke, Mr. Ayliffe or Mr. Chandler in the</p> <p>14 process of gathering information for your report?</p> <p>15 A. No. The only caveat is early at the initial</p> <p>16 contact with Mr. Chandler, there may have been a</p> <p>17 document that he provided. But I've had no contact</p> <p>18 with Mr. Chandler since I decided I would proceed with</p> <p>19 this matter whenever -- was it March 2nd or early</p> <p>20 March.</p> <p>21 Q. Okay. And so your testimony is you had no</p>
<p style="text-align: right;">Page 106</p> <p>1 some documents related to the litigation and there</p> <p>2 were some circumstances -- I don't have a particular</p> <p>3 recollection of which ones -- where I asked for</p> <p>4 documents. There might have been a reference to</p> <p>5 something and it wasn't immediately available to me.</p> <p>6 And otherwise, you know, I researched on my</p> <p>7 own.</p> <p>8 Q. Other than pleadings and deposition</p> <p>9 exhibits, did TVA provide you any documents that you</p> <p>10 considered and relied on?</p> <p>11 A. I don't think so, because the -- many of the</p> <p>12 deposition exhibits would, for example, would have</p> <p>13 been -- you know, for example, Mr. Repka's report</p> <p>14 documents related to the construction permit -- you</p> <p>15 know, the construction permits themselves and all.</p> <p>16 So, you know, as I say, even the -- I think the Marble</p> <p>17 Hill decision which is, you know, basically a publicly</p> <p>18 available decision of the Nuclear Regulatory</p> <p>19 Commission. You know, again, that -- I think they may</p> <p>20 have provided that in the letter to Dr. Asperger from</p> <p>21 Acting Director Case. But I don't recall anything</p>	<p style="text-align: right;">Page 108</p> <p>1 contact with Mr. Chandler since either February --</p> <p>2 yeah, February 27th or February 28th when he sent you</p> <p>3 those materials?</p> <p>4 A. No, I had contact with Mr. Chandler that may</p> <p>5 have been March 2nd when we actually had a phone call</p> <p>6 where he introduced me to Mr. Ayliffe. But after</p> <p>7 that, I've had no contact with Mr. Chandler.</p> <p>8 Q. And to reiterate you have had no contact</p> <p>9 with Mr. Shea in the process of preparing your</p> <p>10 reports. Is that correct?</p> <p>11 A. That's correct. I've had no contact with</p> <p>12 Mr. Shea regarding this report.</p> <p>13 Q. Did you have any communication with Michael</p> <p>14 Lepre of the Pillsbury firm --</p> <p>15 A. No, I did not.</p> <p>16 Q. -- in this engagement?</p> <p>17 A. No.</p> <p>18 Q. Have you had any communication with anyone</p> <p>19 connected with the Pillsbury firm concerning their</p> <p>20 letter that's an exhibit in this case?</p> <p>21 A. No, I have not.</p>

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<p style="text-align: right;">Page 109</p> <p>1 Q. Okay. Did you have any communications with</p> <p>2 anyone at the NRC in the process of preparing your</p> <p>3 reports?</p> <p>4 A. The only person I would have had contact</p> <p>5 with was someone in the public document room at the</p> <p>6 NRC, because I was looking for the attachments to</p> <p>7 Acting Director Case's letter to Dr. Asperger. And</p> <p>8 so, I obtained that through the public document</p> <p>9 services that the NRC provides.</p> <p>10 But I've had no contact with anyone else at</p> <p>11 the NRC regarding this matter.</p> <p>12 Q. And are those attachments listed in the</p> <p>13 materials you considered as part of your report?</p> <p>14 A. I believe -- I believe so.</p> <p>15 Q. Will you check and show us where?</p> <p>16 A. In fact it may not be specifically -- Mr.</p> <p>17 Case's letter to Dr. Asperger is cited there,</p> <p>18 although -- as the Exhibit D to TVA's brief, but the</p> <p>19 attachment, Dr. -- Mr. Case's letter lists certain</p> <p>20 attachments and that's what I sought from the NRC</p> <p>21 public document room and they are public documents.</p>	<p style="text-align: right;">Page 111</p> <p>1 counsel or anyone at TVA orally that was not reduced</p> <p>2 to writing or in a document that you considered in</p> <p>3 preparing your report?</p> <p>4 A. Not that I -- not that I recall. You know,</p> <p>5 obviously we've had discussions -- I've had</p> <p>6 discussions with counsel, but I don't consider that</p> <p>7 responsive to your question.</p> <p>8 Q. Well, even in discussions with counsel,</p> <p>9 you're required to reveal any data or facts that were</p> <p>10 provided to you by counsel --</p> <p>11 A. Okay.</p> <p>12 Q. -- to be considered?</p> <p>13 A. And that, I was not provided any data or</p> <p>14 facts by counsel that are not reflected in the report.</p> <p>15 Q. Okay. All right. Now, you listed five</p> <p>16 depositions including your supplemental report that</p> <p>17 you reviewed. You listed the deposition of Larry</p> <p>18 Blust, Chris Chandler, William McCollum, Dave Repka,</p> <p>19 and Timothy Matthews. Is that correct?</p> <p>20 A. Correct.</p> <p>21 Q. I couldn't hear you. I'm sorry.</p>
<p style="text-align: right;">Page 110</p> <p>1 Q. Well, did you obtain -- did you obtain the</p> <p>2 attachment?</p> <p>3 A. Yes, I did.</p> <p>4 Q. But you didn't list them on your matters</p> <p>5 considered. Is that correct?</p> <p>6 A. Yes, I did not provide a specific list of</p> <p>7 attachments. Arguably the letter from Mr. Case to Dr.</p> <p>8 Asperger identifies attachments with it. So I mean,</p> <p>9 that's part of it.</p> <p>10 Q. But the Exhibit D that you looked at which</p> <p>11 was letter filed in court would not have attachments,</p> <p>12 did it?</p> <p>13 A. I'm not absolutely sure of that but I think</p> <p>14 the answer is it did not and that's why I sought the</p> <p>15 public documents from the NRC public document room.</p> <p>16 Q. Were all of the documents and materials that</p> <p>17 you considered in your reports listed either in</p> <p>18 Exhibit A to the original report or Exhibit A to the</p> <p>19 supplemental report?</p> <p>20 A. Yes. To the best of my knowledge, yes.</p> <p>21 Q. Did you receive any information from TVA</p>	<p style="text-align: right;">Page 112</p> <p>1 A. That's correct.</p> <p>2 Q. Okay. You've not reviewed any other</p> <p>3 depositions in this case. Is that correct?</p> <p>4 A. That's correct.</p> <p>5 Q. How did you determine to review only those</p> <p>6 depositions?</p> <p>7 A. Well, the most significantly I reviewed</p> <p>8 David Repka's deposition because it was reflective of</p> <p>9 his views with respect to the reports he filed. So</p> <p>10 that was most significant.</p> <p>11 I think I reviewed the other -- well, and</p> <p>12 also with respect to Tim Matthews and the views that</p> <p>13 Tim Matthews was espousing during his deposition that</p> <p>14 are addressed in the supplemental report.</p> <p>15 With respect to Chris Chandler, Larry Blust,</p> <p>16 Mr. McCollum, I reviewed I think just for general</p> <p>17 background. But they did not figure significantly in</p> <p>18 the report.</p> <p>19 Q. They're not cited in your report at all</p> <p>20 except in your list of materials reviewed. Is that</p> <p>21 correct?</p>

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<p style="text-align: right;">Page 113</p> <p>1 A. I believe that's correct.</p> <p>2 Q. Is it a fair statement to say that there's</p> <p>3 nothing in your report that relies on the deposition</p> <p>4 testimony of Chris Chandler?</p> <p>5 A. Well, I didn't -- I did not make specific</p> <p>6 reference to it. I agree with that. Again, what I</p> <p>7 did writing the report is to provide citations to</p> <p>8 either significant decisions or what I thought were</p> <p>9 significant exhibits or other documents that bore most</p> <p>10 directly on the report.</p> <p>11 But, you know, I would not dismiss any of</p> <p>12 the other things that might have been listed but not</p> <p>13 called out in a specific reference because they did,</p> <p>14 you know, provide some of the milieu or the background</p> <p>15 for what I was looking at in drafting and creating the</p> <p>16 report.</p> <p>17 Q. Was there anything in Chris Chandler's</p> <p>18 deposition in his testimony that you relied on in</p> <p>19 forming your opinions?</p> <p>20 A. I don't think there is anything particular</p> <p>21 in his deposition. Again, you know, it helps me</p>	<p style="text-align: right;">Page 115</p> <p>1 Q. Okay. Is that because you saw the</p> <p>2 deposition exhibits when you read the depositions? Is</p> <p>3 that what you're saying?</p> <p>4 A. I may have -- well, some -- I may have -- I</p> <p>5 think I was provided some exhibits by TVA. And then</p> <p>6 when I was reading the depositions, there may have</p> <p>7 been exhibits that were identified in the course of</p> <p>8 the deposition that I wasn't sure what that was and</p> <p>9 wanted to take a look at.</p> <p>10 I think that's just the process of, you</p> <p>11 know, putting it together.</p> <p>12 Q. Okay. So if there were other exhibits,</p> <p>13 deposition exhibits in the case and you did not review</p> <p>14 those depositions and you did not receive those other</p> <p>15 exhibits from TVA counsel, you wouldn't know anything</p> <p>16 about whether they existed or not existed, would you?</p> <p>17 A. Can you repeat the question? I'm not sure I</p> <p>18 understand it.</p> <p>19 Q. All right. You said you reviewed certain</p> <p>20 depositions and you were provided exhibits by TVA</p> <p>21 counsel, and then you had some questions about</p>
<p style="text-align: right;">Page 114</p> <p>1 provide, as did the others, provide me context for the</p> <p>2 circumstances.</p> <p>3 Q. Now, you reviewed the deposition exhibits</p> <p>4 that are listed in your Exhibit A, correct?</p> <p>5 A. Correct.</p> <p>6 Q. How did you determine to review and consider</p> <p>7 only those exhibits and not other deposition exhibits</p> <p>8 either from the depositions you reviewed or from the</p> <p>9 depositions you did not review?</p> <p>10 A. I think in looking from my standpoint, going</p> <p>11 back and thinking about it in terms of drafting the</p> <p>12 report, these were things that sort of came to the</p> <p>13 four, because they are things like construction</p> <p>14 permits. There is some litigation documents between</p> <p>15 ND and TVA.</p> <p>16 It has other, you know, other documentation</p> <p>17 with respect to the handling of prior transfers and</p> <p>18 things like that.</p> <p>19 So what I was doing is I think from my</p> <p>20 standpoint, these had the most influence in terms of</p> <p>21 coming up with the opinions provided in the report.</p>	<p style="text-align: right;">Page 116</p> <p>1 exhibits that were not provided in the depositions you</p> <p>2 read and you asked for those exhibits as well. Is</p> <p>3 that correct?</p> <p>4 A. Yes, that's correct.</p> <p>5 Q. All right. But if you didn't review certain</p> <p>6 depositions and those deposition exhibits were not</p> <p>7 provided by TVA counsel, you wouldn't know whether</p> <p>8 they existed or not, would you?</p> <p>9 A. I think that's speculative. It --</p> <p>10 Q. Well, you wouldn't --</p> <p>11 A. Probably not. Probably not, but --</p> <p>12 Q. My point is you didn't read all the</p> <p>13 depositions or review all the deposition exhibits in</p> <p>14 this case, did you?</p> <p>15 A. I have not read every document that has been</p> <p>16 filed or has been exchanged between the parties in</p> <p>17 this litigation.</p> <p>18 Q. You've certainly not read every document</p> <p>19 that's been produced by the parties in this case, have</p> <p>20 you?</p> <p>21 A. I think that's what I just answered to that.</p>

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<p style="text-align: right;">Page 117</p> <p>1 I have not read every document that's been exchanged</p> <p>2 or prepared by both parties in this case.</p> <p>3 Q. Well, would you concede there are facts in</p> <p>4 this case which you're not aware of?</p> <p>5 MR. LEMBKE: Objection, lack of foundation,</p> <p>6 calls for speculation.</p> <p>7 You can answer if you can, Mr. Burns.</p> <p>8 THE WITNESS: I have no reason -- I have no</p> <p>9 basis on which to answer that question.</p> <p>10 BY MR. O'REAR:</p> <p>11 Q. You think you may have -- you may have</p> <p>12 reviewed every fact that's been presented in this</p> <p>13 case?</p> <p>14 A. Well, again, I say, what do you mean by fact</p> <p>15 here? I believe I have reviewed the relevant facts</p> <p>16 related to the opinion I have provided. Whether there</p> <p>17 are other facts related --</p> <p>18 Q. Well, there --</p> <p>19 A. Whether there are other facts relating to</p> <p>20 the litigation between the two parties, I would</p> <p>21 concede there undoubtedly are. But I'm not sure that</p>	<p style="text-align: right;">Page 119</p> <p>1 Q. Did you review the contract in question,</p> <p>2 which is in your stack there, it's Exhibit A -- excuse</p> <p>3 me, Exhibit 1?</p> <p>4 It's also marked Exhibit A to the complaint.</p> <p>5 A. Yes, I have. I have looked at the contract.</p> <p>6 Q. Did you see and consider Section 7(a) of the</p> <p>7 contract? If you'll look at that on Page 8.</p> <p>8 A. Yes, I believe -- yeah, I'm aware of the</p> <p>9 provision.</p> <p>10 Q. You're aware of the provision seven -- A7?</p> <p>11 A. Yes, I've seen that. Yes, I've seen that.</p> <p>12 I've seen it referenced in some of the litigation</p> <p>13 documents.</p> <p>14 Q. Okay. So you were aware when you prepared</p> <p>15 your report that the TVA representative and warranted</p> <p>16 in the contract that no NRC authorization consent or</p> <p>17 approval was necessary to sell the site to Nuclear</p> <p>18 Development?</p> <p>19 MR. LEMBKE: Objection to the form,</p> <p>20 misstates the evidence.</p> <p>21 BY MR. O'REAR:</p>
<p style="text-align: right;">Page 118</p> <p>1 I have missed some significant matter or factual</p> <p>2 matter.</p> <p>3 Q. When I refer to facts, I'm referring to</p> <p>4 testimony or documentary evidence.</p> <p>5 A. So -- and again, the question is?</p> <p>6 Q. Well, I'm going to ask you another question.</p> <p>7 I believe you stated that you have reviewed</p> <p>8 all relevant facts that pertain to your opinion?</p> <p>9 A. That's correct.</p> <p>10 Q. Even though there may be facts out there</p> <p>11 you're unaware of at this moment, right?</p> <p>12 MR. LEMBKE: Objection, argumentative.</p> <p>13 BY MR. O'REAR:</p> <p>14 Q. Right?</p> <p>15 MR. LEMBKE: Same objection.</p> <p>16 BY MR. O'REAR:</p> <p>17 Q. You can answer.</p> <p>18 A. I believe I have reviewed the facts that are</p> <p>19 relevant to the opinion. If there are other facts, I</p> <p>20 am not aware of any significant fact that would change</p> <p>21 that opinion. And no basis to believe that there are.</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. Is that correct?</p> <p>2 MR. LEMBKE: Same objection.</p> <p>3 THE WITNESS: Well, I'm aware of that</p> <p>4 provision, yes.</p> <p>5 BY MR. O'REAR:</p> <p>6 Q. Okay. You're aware of the provision that</p> <p>7 says no authorization consent or approval or other</p> <p>8 order or action or filing with any governmental</p> <p>9 authority is required for the execution and delivery</p> <p>10 by the TVA of this agreement for the consummation by</p> <p>11 the TVA of this -- of the transactions contemplated</p> <p>12 hereby? You're aware of that and were when you formed</p> <p>13 your opinions. Is that right?</p> <p>14 A. I may have lost myself.</p> <p>15 Where is the provision, again?</p> <p>16 Q. It's on Page 8 of Exhibit 1, Section 7(a)7?</p> <p>17 A. Okay. And your question is?</p> <p>18 Q. Well, I just want to make sure you know and</p> <p>19 we're talking about the same provision.</p> <p>20 I read the second part of subsection seven.</p> <p>21 A. Yes, I've seen the provision and I'm aware</p>

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<p style="text-align: right;">Page 121</p> <p>1 of that provision.</p> <p>2 Q. And did that provision -- was that provision</p> <p>3 a factor one way or the other that you considered in</p> <p>4 forming your opinion?</p> <p>5 MR. LEMBKE: Objection, vague.</p> <p>6 BY MR. O'REAR:</p> <p>7 Q. You may answer.</p> <p>8 MR. LEMBKE: Same objection.</p> <p>9 THE WITNESS: The answer -- my answer is</p> <p>10 that provision -- that's a provision in this contract.</p> <p>11 That does not go to my judgement with respect to the</p> <p>12 application of the Nuclear Regulatory Commission's</p> <p>13 regulatory framework.</p> <p>14 BY MR. O'REAR:</p> <p>15 Q. Okay. So are you saying that that provision</p> <p>16 did not factor into your opinion?</p> <p>17 MR. LEMBKE: Objection, asked and answered.</p> <p>18 BY MR. O'REAR:</p> <p>19 Q. Are you saying that that section did not</p> <p>20 factor into your opinion?</p> <p>21 MR. LEMBKE: Same objection.</p>	<p style="text-align: right;">Page 123</p> <p>1 Section 1(e) by closing, TVA's obligations under this</p> <p>2 Section 1(e) shall cease." Do you see that?</p> <p>3 A. Yes, I do.</p> <p>4 Q. Did that section of the contract factor in</p> <p>5 to your opinion?</p> <p>6 A. No, because, again, this is a contract</p> <p>7 between Nuclear Development and TVA and my opinion it</p> <p>8 reflects my judgement with respect to NRC's historic</p> <p>9 regulatory regime and regulatory authority.</p> <p>10 Q. Were you aware --</p> <p>11 A. This could not --</p> <p>12 Q. Okay. Were you aware of the fact that</p> <p>13 Nuclear Development paid TVA \$22.2 million when the</p> <p>14 contract was signed?</p> <p>15 A. I have no specific awareness of that.</p> <p>16 Q. Were you aware that Nuclear Development paid</p> <p>17 TVA an additional \$8 million in maintenance costs and</p> <p>18 fees between the date the contract was signed and the</p> <p>19 date of the scheduled closing?</p> <p>20 A. I don't have any particular awareness of</p> <p>21 that.</p>
<p style="text-align: right;">Page 122</p> <p>1 THE WITNESS: That --</p> <p>2 BY MR. O'REAR:</p> <p>3 Q. Pardon me?</p> <p>4 A. That provision does not reflect on the NRC's</p> <p>5 regulatory framework or authority.</p> <p>6 Q. Okay. If you would turn to Page 3 of the</p> <p>7 contract.</p> <p>8 A. (Witness complies.)</p> <p>9 Q. And if you would look at Section 1(e) of the</p> <p>10 contract in the middle of the page?</p> <p>11 A. Yes, I see it.</p> <p>12 Q. And did you review that section in the</p> <p>13 process of preparing your report?</p> <p>14 A. Let me read it again.</p> <p>15 Yes, I was aware of this provision. I read</p> <p>16 this part of the contract.</p> <p>17 Q. Okay. Were you specifically aware of the</p> <p>18 last sentence of subsection E which states, "Further</p> <p>19 if an applicable governmental authority has not</p> <p>20 accepted or otherwise allowed the transfer of a</p> <p>21 permit, license or authorization pursuant to this</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. So those facts did not play a part in your</p> <p>2 opinion. Is that correct?</p> <p>3 A. That's correct.</p> <p>4 Q. And you did not review the deposition of TVA</p> <p>5 CEO Bill Johnson. Is that correct?</p> <p>6 A. That's correct, I did not read that one.</p> <p>7 Q. Were you aware of the fact that Mr. Johnson</p> <p>8 made the decision not to close the sale to Nuclear</p> <p>9 Development?</p> <p>10 A. I'm not sure in what context. Probably I</p> <p>11 had learned that in terms of the context of my review</p> <p>12 with respect to matters involved in this case, but I</p> <p>13 didn't have any other, you know, personal knowledge.</p> <p>14 Q. Regardless of how you learned it, were you</p> <p>15 aware of it when you prepared your report and formed</p> <p>16 your opinions?</p> <p>17 A. Well, I was aware that -- where TVA was on</p> <p>18 the matter, yes, when I wrote my opinion.</p> <p>19 Q. Were you aware that Mr. Johnson, the CEO,</p> <p>20 personally made the decision not to close the sale to</p> <p>21 Nuclear Development?</p>

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<p style="text-align: right;">Page 125</p> <p>1 A. I really can't say.</p> <p>2 Q. Did you review a video of Mr. Johnson at a</p> <p>3 TVA-wide meeting just four days before the closing</p> <p>4 day?</p> <p>5 A. No, I did not.</p> <p>6 Q. Would Mr. Johnson's motivation for making</p> <p>7 the decision not to close have mattered to you one way</p> <p>8 or the other in forming your opinion?</p> <p>9 A. No.</p> <p>10 Q. If you'd look at Exhibit 31, if you can find</p> <p>11 it there.</p> <p>12 A. Yes, I think I've got it. Yes, I have it.</p> <p>13 Q. This exhibit on the first paper is an e-mail</p> <p>14 from Sherry Quirk, general counsel of TVA to Larry</p> <p>15 Blust, counsel for Nuclear Development dated November</p> <p>16 29, 2018?</p> <p>17 A. Correct.</p> <p>18 Q. Have you ever seen -- and it attaches a</p> <p>19 letter from Ms. Quirk -- have you seen that exhibit</p> <p>20 before?</p> <p>21 A. I believe I have.</p>	<p style="text-align: right;">Page 127</p> <p>1 interested in this letter were really the first page,</p> <p>2 I think. Well, so many other things. But I looked at</p> <p>3 it, yes, I looked at it during the review and I</p> <p>4 considered it. But more directly it was the Pillsbury</p> <p>5 letter that I considered more deeply.</p> <p>6 Q. Did you know that this letter from Ms. Quirk</p> <p>7 was not delivered to Nuclear Development until</p> <p>8 9:00 p.m. the night before the closing date?</p> <p>9 A. Well, I see a 9:00 p.m. date on the e-mail.</p> <p>10 I had no particular knowledge of that.</p> <p>11 Q. Okay. But you said you looked at or relied</p> <p>12 on portions of the first page. If you would look at</p> <p>13 the first page of her letter --</p> <p>14 A. Yes.</p> <p>15 Q. Do you see that --</p> <p>16 MR. LEMBKE: I object to the form of that</p> <p>17 question because it misstates his testimony.</p> <p>18 MR. O'REAR: Okay.</p> <p>19 BY MR. O'REAR:</p> <p>20 Q. Do you see at the end of the first paragraph</p> <p>21 the reference of acquiring a production facility,</p>
<p style="text-align: right;">Page 126</p> <p>1 Q. Okay. Sir, and you did not reference this</p> <p>2 exhibit in your Exhibit A, did you?</p> <p>3 A. I'd have to review Exhibit A.</p> <p>4 MR. LEMBKE: Mr. O'Rear, I'd like to direct</p> <p>5 you to Number 28 on Exhibit A.</p> <p>6 MR. O'REAR: Which number?</p> <p>7 MR. LEMBKE: Twenty-eight.</p> <p>8 THE WITNESS: It's Number 28 but it's got a</p> <p>9 different -- a deposition exhibit number.</p> <p>10 MR. O'REAR: Okay.</p> <p>11 BY MR. O'REAR:</p> <p>12 Q. Did you rely on this letter for any purpose</p> <p>13 in forming your opinion?</p> <p>14 A. Let me look at it for a moment.</p> <p>15 Well, the letter references an opinion by</p> <p>16 outside counsel, which I presume is Pillsbury, the</p> <p>17 Pillsbury firm which provided opinion to TVA. And to</p> <p>18 the extent, really the only -- to the extent I did</p> <p>19 reference and consider the Pillsbury letter, I guess</p> <p>20 the answer would be indirectly yes.</p> <p>21 Although the only things I would have been</p>	<p style="text-align: right;">Page 128</p> <p>1 correct?</p> <p>2 A. Yes, I do.</p> <p>3 Q. Is it your opinion that the Bellefonte site</p> <p>4 is a production facility?</p> <p>5 A. It has a production facility on it that is</p> <p>6 under construction.</p> <p>7 Q. What is the production facility?</p> <p>8 A. It's a production facility as defined in</p> <p>9 Section 101 of the Atomic Energy Act and the</p> <p>10 implementing regulations. And basically it's one</p> <p>11 that's capable -- I can't quote it from memory --</p> <p>12 capable of producing a nuclear reaction -- one</p> <p>13 designed or used for production or for creating a</p> <p>14 nuclear reaction.</p> <p>15 Q. I think you're referring to a utilization</p> <p>16 facility definition, aren't you?</p> <p>17 A. Yes, I am.</p> <p>18 Q. I'm asking you do you agree that this is a</p> <p>19 production facility?</p> <p>20 Production facility is different from a</p> <p>21 utilization facility, isn't it?</p>

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<p style="text-align: right;">Page 129</p> <p>1 A. That's correct. This is a utilization 2 facility. 3 Q. So you do not agree with her reference to 4 this site as a production facility. Is that correct? 5 A. Well, I think it should have used the term 6 "utilization." The basic principle is the same under 7 Section 101 for both, but I see utilization 8 differently. 9 Q. You mentioned the Pillsbury letter. Were 10 you aware that the Pillsbury letter was not produced 11 by TVA to Nuclear Development until well after the 12 lawsuit was filed? 13 A. I have no knowledge of when it was provided. 14 Q. Does the fact that it -- if it is a fact 15 that the letter was not produced prior to the lawsuit 16 being filed or prior to the closing play any factor in 17 your opinion? 18 A. No, it doesn't. Because the opinion goes to 19 the nature, it doesn't go to what the motivations of 20 parties were or their interactions. It goes to the 21 legal question with respect to the status of the</p>	<p style="text-align: right;">Page 131</p> <p>1 Q. Well, you know it's true, don't you? 2 A. Well, you're ask- -- I'm not going to 3 speculate as to whether they could, they should or 4 would. 5 Q. I'm not asking you if they should. I'm 6 asking you if they could have done that, couldn't 7 they? 8 A. As could Nuclear Development. 9 Q. Okay. And the NRC has a process for 10 handling such requests. Is that correct? 11 A. Yes, I would say it overstates it to say 12 that there's a process or formality but there could 13 have been -- I imagine there could have been some 14 consultation. 15 Q. Are you aware that TVA ceased all 16 construction at this site in 1988? 17 A. Yes, I'm generally aware of that. What I 18 perhaps am not as clear on is to what extent -- well, 19 you know, I understand they would have maintained it. 20 And then when -- after they re-acquired the 21 construction permit in 2009. Again, if we're going</p>
<p style="text-align: right;">Page 130</p> <p>1 Bellefonte site and the ability of it to be -- and 2 what context it can be transferred at all. 3 So that's -- that's what I was looking at. 4 Q. Are you aware of the fact that TVA never 5 sought a threshold determination from the NRC before 6 refusing to close the sale to Nuclear Development? 7 A. I think I'm generally aware of that and my 8 understanding is neither did Nuclear Development. 9 Q. Well, Nuclear Development didn't contend 10 that there was any issue, did they? 11 A. I really don't know until -- well, actually, 12 I'm not sure. Because even reading Mr. Repka's 13 opinion and Mr. Matthew's opinion, you know, this is 14 -- there's a bit of wishful thinking about going 15 forward without the prior approval of the CP transfer. 16 I can't really -- I can't speculate as to 17 that. All I know is my understanding is neither did. 18 Q. If TVA had a question about the legality of 19 the closing, it could have requested a threshold 20 determination from the NRC. Is that correct? 21 A. I suppose that's true.</p>	<p style="text-align: right;">Page 132</p> <p>1 through the maintenance preservation option, they 2 would have done some things. 3 But in terms of construct -- I do understand 4 that there has been no construction towards actual 5 completion, I think since about that time. 6 Q. All right. And do you understand that unit 7 One has been estimated by TVA itself to be only 8 55 percent complete? 9 MR. LEMBKE: Object to the form. When? 10 BY MR. O'REAR: 11 Q. In 2010 or prior? 12 A. I'm not aware specifically of what the 13 completion percentages were. I understand they were 14 -- they were fairly far along but there was still a 15 lot of work that needed to be done. 16 Q. Well, you don't -- were you made aware that 17 TVA estimated that unit two of Bellefonte was only 18 35 percent complete? 19 A. Again, I don't know the -- I don't have a 20 recollection of particular percentages. I know that 21 there were -- you know, some substantial construction</p>

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<p style="text-align: right;">Page 133</p> <p>1 had been done but I don't have an idea of what they</p> <p>2 were.</p> <p>3 One thing I will add, for example, is the</p> <p>4 NRC used to use Bellefonte as a training bit -- or</p> <p>5 visiting for new employees because they were done far</p> <p>6 enough that you get an idea of what a nuclear reactor</p> <p>7 on a nuclear site was. So they were gone -- they more</p> <p>8 than the groundbreaking, but I -- you know, I</p> <p>9 understand that there was substantial work that would</p> <p>10 need to be done to complete them.</p> <p>11 Q. You have Exhibit 127 before you? That's</p> <p>12 color photographs on the cover.</p> <p>13 MR. LEMBKE: It's very small plus the</p> <p>14 exhibit Number?</p> <p>15 THE WITNESS: Mine is black and white.</p> <p>16 BY MR. O'REAR:</p> <p>17 Q. The caption of the document's Bellefonte</p> <p>18 Nuclear Plant Unit One and Common Completion of the</p> <p>19 Project.</p> <p>20 A. Correct. Yeah, I have that.</p> <p>21 Q. Okay. Have you ever seen that document</p>	<p style="text-align: right;">Page 135</p> <p>1 A. No.</p> <p>2 Q. Okay. And then the last sentence was, "The</p> <p>3 Bellefonte site contained a second identical unit that</p> <p>4 was completed to approximately 58 percent in 1988 and</p> <p>5 is currently estimated to be 35 percent complete for</p> <p>6 the same reasons listed above." Do you see that?</p> <p>7 MR. LEMBKE: Object to the form, lack of</p> <p>8 foundation.</p> <p>9 BY MR. O'REAR:</p> <p>10 Q. Do you see that?</p> <p>11 A. I see that.</p> <p>12 MR. LEMBKE: Same objection.</p> <p>13 BY MR. O'REAR:</p> <p>14 Q. Do you have any information that would</p> <p>15 refute that?</p> <p>16 A. No, I don't.</p> <p>17 Q. Okay.</p> <p>18 Would it have mattered to you in forming</p> <p>19 your opinions to know that Unit One was only 55</p> <p>20 percent complete and Unit Two 35 percent complete?</p> <p>21 A. No, it would not.</p>
<p style="text-align: right;">Page 134</p> <p>1 before?</p> <p>2 A. I'm not specifically aware of it, no. I</p> <p>3 don't think I've actually particularly read it before.</p> <p>4 Q. Let me ask you then about something in it.</p> <p>5 Do you see on Page 1, if you would turn</p> <p>6 there?</p> <p>7 A. Yes.</p> <p>8 Q. And if you would look at the bottom of the</p> <p>9 page, the last bullet point says, "Unit One was</p> <p>10 90 percent physically complete in 1988 and investment</p> <p>11 recovery effort from 2005 to 2007 removed material and</p> <p>12 equipment due to this effort additional scope during</p> <p>13 DSEP and planned equipment refurbishment, completion</p> <p>14 -- current completion estimate is 55 percent." Do you</p> <p>15 see that?</p> <p>16 A. Yes.</p> <p>17 MR. LEMBKE: I object to the form, lack</p> <p>18 foundation.</p> <p>19 BY MR. O'REAR:</p> <p>20 Q. Do you have any facts that you're aware of</p> <p>21 that would refute that?</p>	<p style="text-align: right;">Page 136</p> <p>1 Q. So that would not have been a factor in</p> <p>2 forming your opinion that Bellefonte is a utilization</p> <p>3 facility?</p> <p>4 MR. LEMBKE: Objection, asked and answered.</p> <p>5 MR. O'REAR: I haven't asked that question.</p> <p>6 THE WITNESS: Well, I did answer it before</p> <p>7 and the answer is it does not affect my opinion.</p> <p>8 BY MR. O'REAR:</p> <p>9 Q. Were you aware that the steam generators in</p> <p>10 Units One and two at Bellefonte have had two-foot by</p> <p>11 two-foot holes cut in them and rendered them</p> <p>12 inoperable and permanently disabled?</p> <p>13 A. I don't have a particular knowledge of that.</p> <p>14 Q. If you knew that, would that have been a</p> <p>15 factor in forming your opinion about whether</p> <p>16 Bellefonte is a utilization facility?</p> <p>17 A. Not under the current circumstances, no.</p> <p>18 Q. Were you aware that the Bellefonte plant was</p> <p>19 never put in operation?</p> <p>20 A. Yes, I'm aware of that.</p> <p>21 Q. And it had never had an operating licensing</p>

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<p style="text-align: right;">Page 137</p> <p>1 from NRC. Are you aware of that?</p> <p>2 A. Yes, I'm aware it has never had an operating</p> <p>3 license.</p> <p>4 Q. Were any of those factors important in</p> <p>5 forming your opinion that Bellefonte is a utilization</p> <p>6 facility?</p> <p>7 A. The first one was what, again?</p> <p>8 Q. That it was never put into operation.</p> <p>9 A. Okay. So no, it does not. It is not</p> <p>10 dispositive with respect to my opinion because</p> <p>11 operation requires a different license for following</p> <p>12 through. And the process that Bellefonte used which</p> <p>13 is the historic two-step licensing process, and they</p> <p>14 would have needed to go into operation to get an</p> <p>15 operating license.</p> <p>16 From my standpoint that does not obviate the</p> <p>17 control that the NRC historically has placed over a</p> <p>18 site that is under construction, even if it is in</p> <p>19 involved construction, and that is where my opinion</p> <p>20 focussed.</p> <p>21 So those factors with respect to lack of</p>	<p style="text-align: right;">Page 139</p> <p>1 Q. I believe he's described as plant manager</p> <p>2 currently. Were you aware of that?</p> <p>3 MR. LEMBKE: Object to the form, lack of</p> <p>4 foundation.</p> <p>5 THE WITNESS: No.</p> <p>6 BY MR. O'REAR:</p> <p>7 Q. Did you know that Mr. Chardos was the head</p> <p>8 of the transition team regarding the transfer of the</p> <p>9 Bellefonte site from TVA to Nuclear Development?</p> <p>10 A. I think I've seen that reference, again, in</p> <p>11 depositions or some other documents.</p> <p>12 Q. All right. And let me direct your attention</p> <p>13 to Page 50 of this deposition, if you would.</p> <p>14 I'm referring to the transcript page. There</p> <p>15 are four pages on one page.</p> <p>16 A. I read the transcript.</p> <p>17 Q. I'm not referring to the bottom right hand</p> <p>18 corner page.</p> <p>19 A. Right. I understand. I have the page of</p> <p>20 the transcript.</p> <p>21 Q. All right. Let me read a question and</p>
<p style="text-align: right;">Page 138</p> <p>1 operation are not dispositive to my opinion.</p> <p>2 Q. All right. I'd like for you to look at the</p> <p>3 next exhibit which is Exhibit 202 which will be the</p> <p>4 deposition of James Chardos. You should have that</p> <p>5 transcript there.</p> <p>6 MR. O'REAR: And that is Exhibit 202, if you</p> <p>7 could mark it as 202, please.</p> <p>8 (Burns Exhibit No. 202 was marked for</p> <p>9 identification.)</p> <p>10 THE WITNESS: I have it.</p> <p>11 BY MR. O'REAR:</p> <p>12 Q. Now, you did not list Mr. Chardos'</p> <p>13 deposition on your report, did you?</p> <p>14 A. No, I did not.</p> <p>15 Q. Do you know who James Chardos is?</p> <p>16 A. I'm not -- I believe -- well, he works for</p> <p>17 the Tennessee Valley Authority. From references in</p> <p>18 other depositions, I would characterize him as a sort</p> <p>19 of a project manager or contact, but I don't -- I</p> <p>20 really don't know much about his role other than what</p> <p>21 I've read in depositions or other documents.</p>	<p style="text-align: right;">Page 140</p> <p>1 answer to you.</p> <p>2 At the bottom of Page 50 the question is,</p> <p>3 "Would you agree that the Bellefonte plant could not</p> <p>4 been under construction since 1988?"</p> <p>5 Answer, "Yes."</p> <p>6 Now, you were unaware of that testimony when</p> <p>7 you prepared your report. Is that correct?</p> <p>8 MR. LEMBKE: I object to the form, lack of</p> <p>9 foundation.</p> <p>10 MR. O'REAR: That he was unaware of it?</p> <p>11 MR. LEMBKE: No. You're reading statements</p> <p>12 that he's -- had given no indication he's ever seen</p> <p>13 before.</p> <p>14 MR. O'REAR: That's what I'm asking him.</p> <p>15 BY MR. O'REAR:</p> <p>16 Q. You were unaware of that testimony from the</p> <p>17 plant manager at Bellefonte when you prepared your</p> <p>18 report. Is that correct?</p> <p>19 MR. LEMBKE: I object to the form.</p> <p>20 Mr. Chardos did not testify that he was the</p> <p>21 plant manager. He identified a separate title in his</p>

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<p style="text-align: right;">Page 141</p> <p>1 deposition. And I also object to the form on the</p> <p>2 basis of lack of foundation and asked and answered.</p> <p>3 He's already said he hasn't read this deposition.</p> <p>4 BY MR. O'REAR:</p> <p>5 Q. Okay. If you -- Mr. Burns, if you knew that</p> <p>6 Mr. Chardos had testified to that in his deposition,</p> <p>7 would that have made a difference in your opinion</p> <p>8 expressed in your report?</p> <p>9 MR. LEMBKE: Let me object to the form of</p> <p>10 the question given that Mr. Chardos' deposition was</p> <p>11 taken on July 10th and the report was issued in --</p> <p>12 prior to that.</p> <p>13 But, go ahead.</p> <p>14 THE WITNESS: So again, the question is?</p> <p>15 BY MR. O'REAR:</p> <p>16 Q. If you were aware of that fact as testified</p> <p>17 by Mr. Chardos, would that have made a difference in</p> <p>18 your opinion in your report?</p> <p>19 A. No, it would not have. Because as I think</p> <p>20 I've stated several minutes ago, I'm aware that the</p> <p>21 Bellefonte -- work on the Bellefonte plant in terms of</p>	<p style="text-align: right;">Page 143</p> <p>1 THE REPORTER: Yes, we're back on the</p> <p>2 record.</p> <p>3 BY MR. O'REAR:</p> <p>4 Q. All right. Mr. Burns, if you would look at</p> <p>5 transcript Page 56 of the Chardos deposition.</p> <p>6 A. I got it.</p> <p>7 Q. I'll read to you the two questions and two</p> <p>8 answers at the end of that page.</p> <p>9 It says question -- it says 2110, I think</p> <p>10 it's supposed to be 2010, "When this report was</p> <p>11 prepared." And it's referring to the report you just</p> <p>12 looked at, which is Exhibit 127 previously.</p> <p>13 It states, "Is it correct to say that the</p> <p>14 design was not finished for Bellefonte or that it was</p> <p>15 contemplated to be changed?"</p> <p>16 Answer, "The design was not complete in</p> <p>17 2010."</p> <p>18 Question, "Okay. And what was not complete</p> <p>19 about the design in 2010?"</p> <p>20 The answer was the control room. "The main</p> <p>21 control room was not a complete design." Do you see</p>
<p style="text-align: right;">Page 142</p> <p>1 active construction has been suspended for some time.</p> <p>2 You know, it's now three decades, I guess. And, you</p> <p>3 know, my understanding even with my encounter when I</p> <p>4 was in the General Counsel's Office in the early 2000s</p> <p>5 was that there wasn't construction going on at that</p> <p>6 time.</p> <p>7 MR. LEMBKE: I can't hear what the witness</p> <p>8 is saying.</p> <p>9 MR. O'REAR: I can -- let's go off the</p> <p>10 record for a minute.</p> <p>11 (Whereupon, a recess ensued.)</p> <p>12 MR. O'REAR: Still with us, Mr. Burns?</p> <p>13 THE WITNESS: I am.</p> <p>14 MR. O'REAR: Can you say something again</p> <p>15 because your voice is muted?</p> <p>16 THE WITNESS: I'm here.</p> <p>17 MR. O'REAR: All right. I hear you now.</p> <p>18 MR. LEMBKE: All right. I'm back.</p> <p>19 MR. O'REAR: Okay. Everybody on?</p> <p>20 Back on the record.</p> <p>21 Ken, are we back on the record?</p>	<p style="text-align: right;">Page 144</p> <p>1 that?</p> <p>2 MR. LEMBKE: Object to the form, lack of</p> <p>3 foundation.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MR. O'REAR:</p> <p>6 Q. If you known those facts when you prepared</p> <p>7 your report, would that have made a difference in your</p> <p>8 opinion?</p> <p>9 A. No, it would not have.</p> <p>10 Q. Okay. If you would turn to Page 68 of the</p> <p>11 transcript.</p> <p>12 A. Okay. I'm there.</p> <p>13 Q. And towards the top of that page the</p> <p>14 question was, "And is it a true statement today that</p> <p>15 the Bellefonte plant site is not in condition to</p> <p>16 enable it to meet performance and design</p> <p>17 requirements?"</p> <p>18 Answer, "Yes."</p> <p>19 If you had known those facts when you</p> <p>20 prepared your report and formed your opinion, would</p> <p>21 that have made a difference?</p>

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<p style="text-align: right;">Page 145</p> <p>1 A. No, it would not.</p> <p>2 MR. LEMBKE: Same objection.</p> <p>3 BY MR. O'REAR:</p> <p>4 Q. Okay. If you would turn to Page 72</p> <p>5 continuing onto Page 73 and 74, let me read you these</p> <p>6 questions and answers starting at Line 18 on Page 72.</p> <p>7 "Is it correct, Mr. Chardos, that Units One</p> <p>8 and two of Bellefonte cannot be used to sustain</p> <p>9 nuclear fission in a self-supporting chain reaction?"</p> <p>10 Answer, "In the current condition."</p> <p>11 Question, "That's a correct statement?"</p> <p>12 Answer, "Yes."</p> <p>13 Question, "Is it a correct statement to say</p> <p>14 that in their current condition Units One and two of</p> <p>15 Bellefonte cannot function as nuclear reactors?"</p> <p>16 There was an objection. He asked for</p> <p>17 restatement of the question.</p> <p>18 I restated, "Is it correct that Units One</p> <p>19 and two of Bellefonte cannot function as nuclear</p> <p>20 reactors in their current condition?" There was an</p> <p>21 objection.</p>	<p style="text-align: right;">Page 147</p> <p>1 Q. Mr. Burns, if you would next direct your</p> <p>2 attention to Exhibit 85.</p> <p>3 A. Eighty-five.</p> <p>4 Q. So you have that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. Have you seen this letter before?</p> <p>7 A. Let me take a look at it. Yes, I have seen</p> <p>8 it.</p> <p>9 Q. Do you recognize it to be a letter from the</p> <p>10 senior project manager regarding the -- at NRC</p> <p>11 regarding the Bellefonte application to transfer a</p> <p>12 construction permit?</p> <p>13 A. Yes, but I don't recall whether this was</p> <p>14 where they finally accept the application or not.</p> <p>15 Q. Well, I'll show you. And it's a letter</p> <p>16 dated November 25th, 2019 to Nuclear Development,</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. Now, if you would, direct your attention to</p> <p>20 the third paragraph of the letter.</p> <p>21 You may read that.</p>
<p style="text-align: right;">Page 146</p> <p>1 Answer, "They cannot function."</p> <p>2 Question, "Cannot function as nuclear</p> <p>3 reactors?"</p> <p>4 Answer, "Yes."</p> <p>5 Question, "Is it a correct statement to say</p> <p>6 that in their current condition Units One and two are</p> <p>7 incapable of utilizing special nuclear materials?"</p> <p>8 Answer, "In their current condition they</p> <p>9 cannot utilize special nuclear material."</p> <p>10 Then later on that page: Question, "Was</p> <p>11 there ever any loading of special nuclear material</p> <p>12 into the reactors at Bellefonte?"</p> <p>13 Answer, "No."</p> <p>14 If you had known any of those facts that I</p> <p>15 just read when you prepared your report and formed</p> <p>16 your opinion, would that have made a difference.</p> <p>17 MR. LEMBKE: I'll object to the form, calls</p> <p>18 for -- speculation -- or lack of foundation and</p> <p>19 compound question.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MR. O'REAR:</p>	<p style="text-align: right;">Page 148</p> <p>1 A. Yes, I've read it.</p> <p>2 Q. Is this the letter where the NRC accepted</p> <p>3 the application for review?</p> <p>4 A. Yes, that's what it appears to be.</p> <p>5 Q. Okay. Does this letter play any part in the</p> <p>6 formation of your opinion?</p> <p>7 A. Well, it --</p> <p>8 Q. Let me ask this question and -- strike that</p> <p>9 former question.</p> <p>10 Does the NRC's acceptance or view of Nuclear</p> <p>11 Development's application have any effect on your</p> <p>12 opinion?</p> <p>13 A. You're asking whether the acceptance of the</p> <p>14 application had any effect?</p> <p>15 Q. Yes.</p> <p>16 A. My opinion? Well, the answer is no.</p> <p>17 Because -- again, based on my experience at the NRC</p> <p>18 and understanding the regulates or the requirements,</p> <p>19 this is what I'd expect from the NRC in terms of an</p> <p>20 application review. And what this deals with is a</p> <p>21 request for an order, an authorization to transfer.</p>

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1 So it works within the framework that I've suggested.

2 Q. Let me direct you to the next exhibit, which

3 is Exhibit 122. It's captioned: Expert Report and it

4 is the report of Dave Repka, Nuclear Development's

5 expert.

6 A. Right.

7 (Burns Exhibit No. 122 was marked for

8 identification.)

9 BY MR. O'REAR:

10 Q. Do you have that?

11 A. I have it.

12 Q. And you addressed this report in your

13 report, correct?

14 A. That's correct.

15 Q. Do you know David Repka?

16 A. Yes, I do.

17 Q. Okay. Do you know that he practiced law in

18 the field of nuclear regulation, compliance and

19 licensing for over 38 years?

20 A. Yes, I know he's basically a nuclear lawyer.

21 Q. And do you know that he regularly practiced

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1 before the NRC?

2 A. Yes, I'm aware of that.

3 Q. Do you know that he formerly worked at the

4 NRC?

5 A. Yes, he was a junior -- he was junior to me

6 as a lawyer, about three years after I began to work

7 for a short period of time.

8 Q. Did you work with him on any matters?

9 A. It's possible. I think he was primarily

10 involved in the licensing -- licensing end. I was

11 involved in oversight and enforcement but also had

12 interactions as I say on citizen petitions that might

13 interact with licensing matters.

14 So I never participated in a case with him,

15 but I probably had some interactions with him.

16 Q. Did he have more experience than you did in

17 licensing matters?

18 A. I would not say that.

19 Q. Would you describe him as a competent

20 nuclear licensing attorney?

21 A. Yeah, I think he's generally a competent

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1 attorney. He's been in the field. He's licensed to

2 practice. Hasn't lost his license, so --

3 Q. Does he have a reputation as a highly

4 skilled and experienced nuclear licensing attorney?

5 A. I can't speak to his reputation.

6 Q. You don't know his reputation?

7 A. I don't know how he is assessed. You're

8 quick to characterize him as a highly respected,

9 highly competent lawyer. He is a lawyer. He's

10 practiced in his field. I believe he's a competent

11 lawyer but as to accolades, I'm not prepared to go

12 there.

13 Q. How many nuclear licensing attorneys do you

14 know that practice privately outside the NRC?

15 A. Today?

16 Q. Yes.

17 A. I didn't hear.

18 Q. How many nuclear licensing attorneys do you

19 know?

20 MR. LEMBKE: I'm going to object on the

21 vague of -- basis of "know."

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1 Do you mean personally know or know of?

2 BY MR. O'REAR:

3 Q. Yes, know of, familiar with, have worked

4 with, have seen their work, have knowledge of their

5 work?

6 A. I would say I'm probably familiar with most

7 members of the nuclear bar.

8 Probably the ones I don't -- I probably

9 don't know a lot of newer people who have come in in

10 the last few years. But, you know, it's hard to put a

11 particular number but I know probably -- I either know

12 or know of many of the people who practice in the

13 field even before the Agency in any number of

14 capacities.

15 Q. How many -- when you were most recently

16 there as commissioner, how many members of the nuclear

17 bar regularly practice before the NRC?

18 A. That's hard for me to answer because, again,

19 you have lawyers representing clients in licensing

20 matters, in enforcement matters, in investigatory

21 matters. And much as a commissioner I'm not

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<p style="text-align: right;">Page 153</p> <p>1 necessarily going to see -- see that.</p> <p>2 I will see -- as a commissioner you'll see</p> <p>3 pleadings that might come to you on appeals or in</p> <p>4 particular hearings conducted by the Commission</p> <p>5 itself. But it's hard for me to speculate on an</p> <p>6 answer.</p> <p>7 Q. How about when you were general counsel, how</p> <p>8 many nuclear licensing lawyers regularly practiced</p> <p>9 before the NRC?</p> <p>10 A. You know, again, it's a speculative answer.</p> <p>11 There are probably a couple dozen who are, you know,</p> <p>12 regularly before the Agency but that doesn't mean that</p> <p>13 there aren't -- you know, there are maybe associates</p> <p>14 and some outside counsel that might be brought in.</p> <p>15 Q. Do you know Tim Matthews?</p> <p>16 A. I actually don't know him well. I know -- I</p> <p>17 know he practices but I think I've only met him a few</p> <p>18 times.</p> <p>19 Q. Do you know Mr. Matthews to have practiced</p> <p>20 in the field of nuclear energy, nuclear licensing for</p> <p>21 over 25 years?</p>	<p style="text-align: right;">Page 155</p> <p>1 morning that he wanted to make.</p> <p>2 THE WITNESS: Yeah. I was asked a question,</p> <p>3 whether I had had any contact with former TVA</p> <p>4 officials regarding this matter. And I recall, I</p> <p>5 think Mr. McCollum had worked at TVA. So I would --</p> <p>6 the only -- the amendment to my answer is when I met</p> <p>7 Mr. McCollum is probably that drop-in from Nuclear</p> <p>8 Development.</p> <p>9 And so technically that was having had a</p> <p>10 contact with a former TVA official. That's all I</p> <p>11 wanted to clarify.</p> <p>12 MR. O'REAR: You ready?</p> <p>13 BY MR. O'REAR:</p> <p>14 Q. Let's go back on the record.</p> <p>15 MR. LEMBKE: I think that was on the record,</p> <p>16 I hope.</p> <p>17 THE REPORTER: Yes, it was on the record.</p> <p>18 BY MR. O'REAR:</p> <p>19 Q. Do you have your report in front of you,</p> <p>20 Exhibit 199?</p> <p>21 A. Yes, I do.</p>
<p style="text-align: right;">Page 154</p> <p>1 A. Yes, I know he has practiced before the</p> <p>2 Agency, I think since the 1990s.</p> <p>3 Q. Does Mr. Matthews have a reputation as a</p> <p>4 skilled and experienced nuclear licensing attorney?</p> <p>5 A. I can't speak to his reputation.</p> <p>6 Q. You don't know?</p> <p>7 A. As I said, I don't have a particular -- a</p> <p>8 lot of particular contact with him, and I don't -- you</p> <p>9 know, I don't know where on the scale of things he's</p> <p>10 considered in practice.</p> <p>11 Q. If you would direct your attention now, to</p> <p>12 Exhibit --</p> <p>13 MR. LEMBKE: This is a good point. Let's</p> <p>14 take a five-minute restroom break.</p> <p>15 MR. O'REAR: Let's do that. Let's go off</p> <p>16 the record.</p> <p>17 (Whereupon, a recess ensued.)</p> <p>18 MR. LEMBKE: There's one point the witness</p> <p>19 needed to clarify from this morning.</p> <p>20 Before we get started, Mr. Burns had one</p> <p>21 point of clarification on some testimony he give this</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. Now, you opine in your report that</p> <p>2 Bellefonte is a nuclear utilization facility, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And your opinion differs from that of Mr.</p> <p>5 Repka, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And your opinion differs from the position</p> <p>8 as testified to by Mr. Matthews. Is that correct?</p> <p>9 A. That's correct.</p> <p>10 Q. In fact on that point your opinion is</p> <p>11 diametrically opposed to both of their opinions,</p> <p>12 correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Do you agree that if Bellefonte is not a</p> <p>15 utilization facility, then the NRC is not required to</p> <p>16 approve the transfer of the construction permits to</p> <p>17 Nuclear Development before ownership of the Bellefonte</p> <p>18 site was transferred to Nuclear Development?</p> <p>19 A. What I have said in my opinion is that those</p> <p>20 facilities given longstanding NRC practice and</p> <p>21 precedent are considered utilization facilities. They</p>

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<p style="text-align: right;">Page 157</p> <p>1 were utilization facilities under construction as</p> <p>2 opposed to operating facilities. And as such, they're</p> <p>3 subject to the construction permit and construction</p> <p>4 authorization.</p> <p>5 And as I said in my opinion and is testified</p> <p>6 as such in the construction permits letters.</p> <p>7 Q. I understand that. You didn't answer the</p> <p>8 question, though.</p> <p>9 A. I did.</p> <p>10 Q. Do you agree that if Bellefonte is not a</p> <p>11 utilization facility, then the NRC is not required to</p> <p>12 approve the transfer of the construction permit before</p> <p>13 ownership of the site is transferred to Nuclear</p> <p>14 Development?</p> <p>15 MR. LEMBKE: Object to the form. You mean</p> <p>16 under the Atomic Energy Act or any legal basis?</p> <p>17 BY MR. O'REAR:</p> <p>18 Q. Under the Atomic Energy Act or any legal</p> <p>19 basis?</p> <p>20 A. So, please repeat the question because I</p> <p>21 want to make sure I get the nuances in it.</p>	<p style="text-align: right;">Page 159</p> <p>1 MR. LEMBKE: I object to the form. The</p> <p>2 witness does not need to answer.</p> <p>3 First of all, object to the statement that</p> <p>4 he didn't answer the question. But beyond that, I</p> <p>5 object on the basis of yes or no. He's entitled to</p> <p>6 explain his answer.</p> <p>7 MR. O'REAR: But he needs to answer the</p> <p>8 question.</p> <p>9 MR. LEMBKE: He already did answer the</p> <p>10 question.</p> <p>11 MR. O'REAR: I don't think he did.</p> <p>12 MR. LEMBKE: Answer it again, Mr. Burns.</p> <p>13 THE WITNESS: Under your hypothetical if it</p> <p>14 is not a utilization facility, which is not the case</p> <p>15 here, then conceivably it could be -- it could be</p> <p>16 transferred to -- to a new owner.</p> <p>17 But that's not the case that you have here.</p> <p>18 That is not the regulatory construction we have in</p> <p>19 play and that is not the historical practice of the</p> <p>20 Nuclear Regulatory Commission.</p> <p>21 BY MR. O'REAR:</p>
<p style="text-align: right;">Page 158</p> <p>1 BY MR. O'REAR:</p> <p>2 Q. Do you agree that Bellefonte is not a</p> <p>3 nuclear -- excuse me. I'll start over.</p> <p>4 Do you agree that if Bellefonte is not a</p> <p>5 utilization facility, then the NRC is not required to</p> <p>6 approve the transfer of the construction permit to</p> <p>7 Nuclear Development before ownership of the Bellefonte</p> <p>8 plant site is transferred to Nuclear Development?</p> <p>9 A. I would -- again, I would only agree if</p> <p>10 basically what was happening was that the project was</p> <p>11 brought to termination and then that the NRC would be</p> <p>12 satisfied that it was no longer on a path toward</p> <p>13 completion of a utilization facility. And thus, that</p> <p>14 transfer might be able to be made but that -- that</p> <p>15 still would require some NRC action.</p> <p>16 I mean, if that -- let me stop there.</p> <p>17 Q. I don't think that answered my question.</p> <p>18 Yes or no; if Bellefonte is not a</p> <p>19 utilization facility, does the NRC have to approve the</p> <p>20 transfer of the construction permits before the site</p> <p>21 is transferred to Nuclear Development?</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. Do you agree that if Bellefonte is not a</p> <p>2 utilization facility, then Section 101 of the Atomic</p> <p>3 Energy Act does not prohibit the transfer of ownership</p> <p>4 of the Bellefonte site by TVA to Nuclear Development</p> <p>5 before the NRC approves the transfer of the</p> <p>6 construction permit?</p> <p>7 A. Again, it's similar to my other answer.</p> <p>8 It's assuming a hypothetical which does not exist in</p> <p>9 this case.</p> <p>10 Q. And the hypothetical is your opinion that it</p> <p>11 is a utilization facility. Is that correct -- or that</p> <p>12 is, my statement or question that it is not, that's</p> <p>13 the hypothetical, right?</p> <p>14 A. Correct.</p> <p>15 Q. And your testimony is based on your opinion</p> <p>16 that it is, correct?</p> <p>17 A. Well, it's my opinion on it. But it is</p> <p>18 based on my historic practice at the NRC and on</p> <p>19 historic precedent of the NRC related to this matter.</p> <p>20 Q. And your opinion is diametrically opposed to</p> <p>21 the opinions of Mr. Repka and Mr. Matthews, correct?</p>

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<p style="text-align: right;">Page 161</p> <p>1 MR. LEMBKE: Well, let me note for the</p> <p>2 report -- I'm going to I object on the basis of lack</p> <p>3 of foundation because Mr. Matthews insisted he was</p> <p>4 offering no opinions in this case.</p> <p>5 MR. O'REAR: And I earlier didn't say</p> <p>6 opinion. I said his testimony.</p> <p>7 MR. LEMBKE: No, you actually said opinion</p> <p>8 both times.</p> <p>9 MR. O'REAR: Okay. I don't think I did the</p> <p>10 first time. But --</p> <p>11 BY MR. O'REAR:</p> <p>12 Q. And your opinion is directly contrary to Mr.</p> <p>13 Repka's opinion, correct?</p> <p>14 A. My opinion differs from Mr. Repka's opinion.</p> <p>15 However, Mr. Repka -- I note Mr. Repka, the opinion he</p> <p>16 gives, is in fact what I would construe as sort of a</p> <p>17 narrow trajectory in this case. And in fact, I think</p> <p>18 I read his opinion as frankly, the preferable scenario</p> <p>19 is the one I describe as what holds here.</p> <p>20 And I would say the same about Mr. Matthews'</p> <p>21 testimony.</p>	<p style="text-align: right;">Page 163</p> <p>1 argumentative.</p> <p>2 BY MR. O'REAR:</p> <p>3 Q. I direct your attention to Paragraph 20 of</p> <p>4 your report.</p> <p>5 A. Okay.</p> <p>6 Q. In Paragraph 20 of your report, you refer to</p> <p>7 the regulatory definition of a utilization facility</p> <p>8 found in 10 CFR 50.2, correct?</p> <p>9 A. Yes. There's a reference to 50.2.</p> <p>10 Q. And you do not reference the statutory</p> <p>11 definition of a utilization facility found in the</p> <p>12 Atomic Energy Act, did you?</p> <p>13 A. I -- in what section? In Section 11?</p> <p>14 Q. In Section 20.</p> <p>15 A. I did not provide a specific reference to</p> <p>16 that.</p> <p>17 Q. Have you provided a reference to a statutory</p> <p>18 definition anywhere in your report?</p> <p>19 A. I don't recall offhand.</p> <p>20 Q. Let's -- do you have there the 10 CFR</p> <p>21 Section 50.2 provision that I had submitted as an</p>
<p style="text-align: right;">Page 162</p> <p>1 BY MR. O'REAR:</p> <p>2 Q. And your opinion is it differs from the</p> <p>3 exhibit that Mr. Matthews prepared called the</p> <p>4 Regulatory Path Forward. Is that correct?</p> <p>5 A. That's correct. But again, I would say that</p> <p>6 my opinion differs -- I agree with Mr. Matthews that</p> <p>7 the -- the way to go, which he describes as the</p> <p>8 preferable way to go, is the way I have described --</p> <p>9 what I've described in my expert opinion.</p> <p>10 When he says there is another thing and</p> <p>11 there is some risk of some violation and maybe it's</p> <p>12 that. Well, in effect, the risk of violation.</p> <p>13 Essentially it is an admission that is not fully law</p> <p>14 abiding to proceed that way.</p> <p>15 Q. Well we dispute that and I don't think that</p> <p>16 was responsive to my question.</p> <p>17 MR. LEMBKE: Move to strike that statement</p> <p>18 by counsel.</p> <p>19 BY MR. O'REAR:</p> <p>20 Q. If you had --</p> <p>21 MR. LEMBKE: Object to the statement as</p>	<p style="text-align: right;">Page 164</p> <p>1 exhibit? Do you see that in your stack?</p> <p>2 A. That's Exhibit 129?</p> <p>3 Q. No. I don't -- no, it is an unmarked</p> <p>4 exhibit.</p> <p>5 MR. LEMBKE: Oh. What's the number?</p> <p>6 MR. O'REAR: The number will be 203.</p> <p>7 MR. LEMBKE: But I'm getting, what is it</p> <p>8 we're looking for in the stack?</p> <p>9 MR. O'REAR: It's just the CFR, 10 CFR 50.2.</p> <p>10 THE WITNESS: I'm seeing a 50.5 but I don't</p> <p>11 know where -- maybe it's back here.</p> <p>12 MR. LEMBKE: It should be towards the back</p> <p>13 of the stack.</p> <p>14 THE WITNESS: Yes, I have it.</p> <p>15 MR. LEMBKE: Okay. Please mark that as</p> <p>16 Exhibit 203.</p> <p>17 (Burns Exhibit No. 203 was marked for</p> <p>18 identification.)</p> <p>19 BY MR. O'REAR:</p> <p>20 Q. Now, I would also like you to locate -- it</p> <p>21 should be right next to where that exhibit was -- the</p>

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<p style="text-align: right;">Page 165</p> <p>1 next exhibit, which is 42 USC Section 2014, the</p> <p>2 definition section of the --</p> <p>3 A. Yeah, I have it.</p> <p>4 Q. -- Atomic Energy Act.</p> <p>5 MR. O'REAR: Mark that one as Exhibit 204.</p> <p>6 (Burns Exhibit No. 204 was marked for</p> <p>7 identification.)</p> <p>8 BY MR. O'REAR:</p> <p>9 Q. Now, is it your understanding as a lawyer</p> <p>10 that the statutory definition takes precedence over</p> <p>11 the regulatory definition to the extent they are</p> <p>12 inconsistent?</p> <p>13 A. If they've been found inconsistent.</p> <p>14 Q. Okay. And in your mind since you didn't</p> <p>15 cite the statutory definition, what role did it play</p> <p>16 in forming an opinion on what is a utilization</p> <p>17 facility?</p> <p>18 MR. LEMBKE: Objection, vague.</p> <p>19 BY MR. O'REAR:</p> <p>20 Q. So what role, if any, did it play in forming</p> <p>21 your opinion?</p>	<p style="text-align: right;">Page 167</p> <p>1 Q. The Agency can't change the statutory</p> <p>2 definition of utilization facility, can it?</p> <p>3 A. Right. It's not going to change the statute</p> <p>4 itself. But what -- as I said, what the Agency does</p> <p>5 have is the authority to implement it and apply it in</p> <p>6 its regulatory framework. And that's what it's doing.</p> <p>7 Q. Wouldn't you agree the statutory definitions</p> <p>8 are paramount?</p> <p>9 A. Paramount to what?</p> <p>10 Q. Paramount to any regulatory definition or</p> <p>11 any interpretation or any Commission opinion or any</p> <p>12 enforcement action opinion?</p> <p>13 MR. LEMBKE: Objection, asked and answered.</p> <p>14 BY MR. O'REAR:</p> <p>15 Q. The statutory definition trumps all of those</p> <p>16 determinations?</p> <p>17 MR. LEMBKE: Objection, asked and answered.</p> <p>18 You can answer it again, Mr. Burns.</p> <p>19 THE WITNESS: I would disagree with the</p> <p>20 characterization that it trumps. Because again, you</p> <p>21 have to look holistically at the statute and what the</p>
<p style="text-align: right;">Page 166</p> <p>1 A. Well, the statutory definitions have a role</p> <p>2 but the other -- the other part of this is you have to</p> <p>3 consider the Agency's authority under the Act and its</p> <p>4 power in terms of adopting regulations, interpreting</p> <p>5 and applying the statutory provisions.</p> <p>6 And again, this is a definitional provision,</p> <p>7 but the Atomic Energy Commission and then the NRC have</p> <p>8 broad authority with respect to implementation and</p> <p>9 basically engineering the regulatory framework under</p> <p>10 which is -- under which it acts and which it applies</p> <p>11 the requirements of the Act to it.</p> <p>12 So, from that standpoint -- now, the</p> <p>13 definition is relevant but I'm as much interested in</p> <p>14 the terms of the implementation of the regulatory</p> <p>15 provision as well as other statutory provisions for</p> <p>16 the application of these requirements.</p> <p>17 There's a famous case, a pivotal case from</p> <p>18 the late 1960s that talks about the Agency being, you</p> <p>19 know, with extraordinarily broad discretion in the</p> <p>20 implementation of its authority. So I think that --</p> <p>21 that's all you're reflecting here -- reflected here.</p>	<p style="text-align: right;">Page 168</p> <p>1 statute does is provide extraordinarily broad</p> <p>2 authority in terms of the implementation.</p> <p>3 So yes, the definition -- I don't dispute</p> <p>4 that the definition has a legal consequence and it has</p> <p>5 legal significance. But the other -- we need to go</p> <p>6 through the rest of the statute and look at what the</p> <p>7 powers are in terms of how the Agency is to implement</p> <p>8 that authority. And that's what is particularly</p> <p>9 important, is the authority to control its regulatory</p> <p>10 framework and its basically oversight of the</p> <p>11 facilities subject to its review.</p> <p>12 BY MR. O'REAR:</p> <p>13 Q. Well, if we're trying to determine what is</p> <p>14 the meaning of a utilization facility under federal</p> <p>15 law, wouldn't the first place you'd look be the</p> <p>16 statute that defines utilization facility?</p> <p>17 A. Well, I would agree, you would look at the</p> <p>18 statute. And then you would look at what the Agency</p> <p>19 has done. And that definition in 10 CFR 50.2 for</p> <p>20 example, it's my guess it goes back to AEC, the Atomic</p> <p>21 Energy Commissions days.</p>

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<p style="text-align: right;">Page 169</p> <p>1 In fact it goes back -- if I look at your</p> <p>2 document, on the very last page of it, it says,</p> <p>3 original course, 21 Federal Register 355 January 19th,</p> <p>4 1956.</p> <p>5 Q. Okay. You said the utilization facility</p> <p>6 definition in the statute is relevant and has legal</p> <p>7 consequence, but isn't it at the top of the spectrum</p> <p>8 in terms of how you look at the definition of</p> <p>9 utilization facility?</p> <p>10 MR. LEMBKE: I object to the form. This is</p> <p>11 argumentative and repetitive.</p> <p>12 He has already answered this question</p> <p>13 repeatedly and you just don't like his answer, so</p> <p>14 you're asking it again and again.</p> <p>15 MR. O'REAR: I'm not sure he's answered.</p> <p>16 MR. LEMBKE: He has answered it.</p> <p>17 BY MR. O'REAR:</p> <p>18 Q. All right. Well, answer that last question</p> <p>19 then.</p> <p>20 A. I answered. I said it is not the ultimate</p> <p>21 and dispositive provision because there are other</p>	<p style="text-align: right;">Page 171</p> <p>1 MR. LEMBKE: Let me object. That was an</p> <p>2 incomplete recitation of that definition. And your</p> <p>3 question now, is based upon incomplete recitation of</p> <p>4 the --</p> <p>5 MR. O'REAR: Well, I will read the rest of</p> <p>6 it. But the rest of it is immaterial to that and it</p> <p>7 talks about the quantity of special nuclear material,</p> <p>8 the character of it.</p> <p>9 BY MR. O'REAR:</p> <p>10 Q. So my question to you, Mr. -- and you may</p> <p>11 consider the entire language of Section 1, subsection</p> <p>12 CC -- is Bellefonte capable of making use of special</p> <p>13 nuclear material?</p> <p>14 A. Bellefonte in its current condition is an</p> <p>15 uncompleted utilization. It cannot -- It cannot</p> <p>16 sustain a chain reaction basically at this point in</p> <p>17 time.</p> <p>18 What I would point out with respect to this</p> <p>19 definition, which goes to the point I was making a few</p> <p>20 minutes ago, is it talks about the Agency. It talks</p> <p>21 about the term "utilization facility" means a</p>
<p style="text-align: right;">Page 170</p> <p>1 provisions in the Atomic Energy Act which pertain to</p> <p>2 the Commission's authority and the implementation of</p> <p>3 the authority through the Act.</p> <p>4 And what the Commission has done, is it's</p> <p>5 done that through its regulations and these are</p> <p>6 regulations of longstanding existence, going back to</p> <p>7 1950.</p> <p>8 Q. All right. So let's look at the statutory</p> <p>9 definition, if you will, which is Exhibit 204. And if</p> <p>10 you would turn to the fifth page of the exhibit,</p> <p>11 subsection CC. You're familiar with this, right?</p> <p>12 A. Yes, I am.</p> <p>13 Q. All right. It's got two parts to it. In</p> <p>14 the first part it says, "A utilization facility means</p> <p>15 any equipment or device except an atomic weapon</p> <p>16 determined by rule of the Commission to be capable of</p> <p>17 making use of special nuclear material." Do you see</p> <p>18 that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. Now, is the Bellefonte plant capable of</p> <p>21 making use of special nuclear material?</p>	<p style="text-align: right;">Page 172</p> <p>1 equipment or device -- except the -- determined by</p> <p>2 rule of the Commission to be capable."</p> <p>3 And so the rule -- that's why I think 50.2</p> <p>4 and other rules of the Commission that govern the</p> <p>5 possession and the construction and ultimately</p> <p>6 operation of a utilization facility are relevant.</p> <p>7 Q. What is the -- so there is no equipment or</p> <p>8 device that Bellefonte is capable of making use of</p> <p>9 special nuclear material. Is that correct?</p> <p>10 MR. LEMBKE: Objection, asked and answered.</p> <p>11 BY MR. O'REAR:</p> <p>12 Q. Is that correct?</p> <p>13 A. I don't know specifically what remains at</p> <p>14 the Bellefonte site. For example, I presume the</p> <p>15 reactors vessels are there but I don't -- I don't</p> <p>16 contest that the plant cannot be currently put into</p> <p>17 operation in its current configuration.</p> <p>18 BY MR. O'REAR:</p> <p>19 Q. Okay. Do you dispute Mr. Chardos' testimony</p> <p>20 that the plant cannot make use of special nuclear</p> <p>21 material?</p>

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<p style="text-align: right;">Page 173</p> <p>1 A. I think I answered that before. I said I</p> <p>2 don't dispute that in its current condition.</p> <p>3 Q. And then let's look at part two of that</p> <p>4 definition. "Any important component part especially</p> <p>5 designed for such equipment or device as determined by</p> <p>6 the Commission." Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Okay. And so, is there a component part of</p> <p>9 this plant that constitutes any equipment or device</p> <p>10 capable of making use of special nuclear material?</p> <p>11 A. Well, that's not what the definition says.</p> <p>12 It's any important component part especially designed</p> <p>13 for such equipment or device.</p> <p>14 Q. Okay. What is the component part especially</p> <p>15 designed for such equipment or device at a utilization</p> <p>16 facility?</p> <p>17 A. There would be any number of things, but the</p> <p>18 reactor vessel would be an important thing.</p> <p>19 I think the significant thing here with</p> <p>20 respect to that is that while the NRC oversees</p> <p>21 significant components -- or it's not only significant</p>	<p style="text-align: right;">Page 175</p> <p>1 A. Right.</p> <p>2 Q. And when the statutory definition says as</p> <p>3 determined by the rule by the Commission, is this a</p> <p>4 rule, 10 CFR 50.2?</p> <p>5 A. Yes, this is a rule.</p> <p>6 Q. And if you go over toward the end, next to</p> <p>7 the last page of the exhibit, we have a definition of</p> <p>8 utilization facility, correct?</p> <p>9 A. Correct.</p> <p>10 Q. All right. It says, "Any nuclear reactor</p> <p>11 other than one designed or used primarily for the</p> <p>12 formation of plutonium or U233," correct?</p> <p>13 A. Right.</p> <p>14 Q. Okay. So with respect to Bellefonte, we're</p> <p>15 not talking about a reactor designed or used primarily</p> <p>16 for the formation of plutonium or U233, are we?</p> <p>17 A. I think that's my understanding.</p> <p>18 Q. Yeah, and so we're talking about just a</p> <p>19 nuclear reactor other than that, right?</p> <p>20 A. Right.</p> <p>21 Q. And that's consistent with the fact that</p>
<p style="text-align: right;">Page 174</p> <p>1 components, it's all the safety related construction</p> <p>2 and related construction and the components that may</p> <p>3 be used in a facility. This provision, there's not</p> <p>4 and licensing of -- that you must have a license to</p> <p>5 possess the steam generator. What you have to have a</p> <p>6 license for is to carry out activities at the site for</p> <p>7 which you are licensed.</p> <p>8 Q. All right. So, are you saying that there's</p> <p>9 no component part at Bellefonte that is a utilization</p> <p>10 facility?</p> <p>11 A. I'm not sure. I'm not sure exactly what the</p> <p>12 -- those component parts, but the fact that they --</p> <p>13 for example, a steam generator, although we understand</p> <p>14 may be solely depleted, is there. That does not have</p> <p>15 a particular significance to me.</p> <p>16 Q. All right. So Section 2 has no significance</p> <p>17 to you? Section 1, that's the pertinent definition</p> <p>18 here. Is that right?</p> <p>19 A. Yes, I believe so.</p> <p>20 Q. Now, if you would look at the regulatory</p> <p>21 definition, which is Exhibit 203.</p>	<p style="text-align: right;">Page 176</p> <p>1 this is not a production facility, correct?</p> <p>2 A. Yes, this not that.</p> <p>3 Q. It never was designed to be a production</p> <p>4 facility, was it?</p> <p>5 A. Not that I'm aware of.</p> <p>6 Q. And there is no nuclear reactor at</p> <p>7 Bellefonte capable of conducting nuclear fission, is</p> <p>8 there?</p> <p>9 A. There is nothing currently capable. There</p> <p>10 is -- in fact I think it was in the context of the --</p> <p>11 the definition, something that is designed -- designed</p> <p>12 or ultimately designed to be finished to do so.</p> <p>13 Q. So is it your opinion that once the</p> <p>14 Bellefonte plant was designed back in early '70s, it</p> <p>15 at that point became a utilization facility?</p> <p>16 A. Once construction permit was issued, the</p> <p>17 construction permit is for a utilization facility, and</p> <p>18 it is for the construction of the utilization facility</p> <p>19 at the site.</p> <p>20 That can go on, there can be changes to it</p> <p>21 over the years but basically the NRC considers that,</p>

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<p style="text-align: right;">Page 177</p> <p>1 under historic practice as cited in the Court, and my</p> <p>2 experience has the utilization facility subject to the</p> <p>3 NRC's control. I concede that it is not one that is</p> <p>4 capable, at that time, of the being put into</p> <p>5 operation.</p> <p>6 Q. Well, let me go back to my question because</p> <p>7 I don't think you answered it.</p> <p>8 When -- when the plant was originally</p> <p>9 designed, was it at that point a utilization facility?</p> <p>10 A. I'm not sure I understand the question.</p> <p>11 Q. Was the ground and the grass at the site a</p> <p>12 utilization facility when the design was prepared?</p> <p>13 A. The ground and the grass are not -- not the</p> <p>14 facility. They're the place where the facility would</p> <p>15 be located. The design is something that has to be</p> <p>16 approved to go forward; and with fraction of the</p> <p>17 facility, that is considered a utilization facility</p> <p>18 that's under construction at the site. The design may</p> <p>19 change over the years.</p> <p>20 There may be additional requirements the NRC</p> <p>21 imposes, there may be design changes that the</p>	<p style="text-align: right;">Page 179</p> <p>1 opined it's a utilization facility.</p> <p>2 THE WITNESS: Well, the one designed, the</p> <p>3 design which is going to be somebody referenced by</p> <p>4 various applicants who seek a construction permit,</p> <p>5 that is designed as a utilization facility.</p> <p>6 BY MR. O'REAR:</p> <p>7 Q. The design plans do not make it a</p> <p>8 utilization facility, do they?</p> <p>9 A. At a particular site? Once -- once you are</p> <p>10 underneath the NRC's authority and have initiated the</p> <p>11 construction -- initiated the construction or taken</p> <p>12 actions under the NRC's authority, it is considered --</p> <p>13 it is considered a utilization facility, albeit it's</p> <p>14 got to progress.</p> <p>15 So, that's partly -- part of that is design,</p> <p>16 part of it that, you know, building administrative</p> <p>17 buildings, part of that's building security things and</p> <p>18 then part of it's building the reactor facility</p> <p>19 itself. So I think that's what is considered.</p> <p>20 And I think that -- again, that's the</p> <p>21 longstanding practice of the staff and that's as</p>
<p style="text-align: right;">Page 178</p> <p>1 applicant wishes to consider and those are there. But</p> <p>2 it doesn't -- from my standpoint for a site that is to</p> <p>3 do something other than be terminated and go away,</p> <p>4 does not make it less of a utilization facility for</p> <p>5 purposes of regulatory control.</p> <p>6 Q. Well, we're asking -- I'm asking you a</p> <p>7 different question.</p> <p>8 Was the ground and grass at Bellefonte a</p> <p>9 utilization facility as soon as the design was</p> <p>10 prepared for the facility?</p> <p>11 A. Are you assuming it owns the license or this</p> <p>12 is prior to its licensing?</p> <p>13 Q. When it was designed. I'm referring to your</p> <p>14 use of the word "design," the definition.</p> <p>15 MR. LEMBKE: I'm going to object to the</p> <p>16 form. Are you meaning utilization facility within the</p> <p>17 meaning of the definition of utilization facility?</p> <p>18 And which definition?</p> <p>19 MR. O'REAR: I'm -- well, whatever</p> <p>20 definition he wants to use. He was presented with two</p> <p>21 here; statutory and regulatory. He's the one that</p>	<p style="text-align: right;">Page 180</p> <p>1 reflected in Mr. Case's letter.</p> <p>2 Q. Did the design plans in and of themselves</p> <p>3 create a utilization facility?</p> <p>4 MR. LEMBKE: Object, it's asked and</p> <p>5 answered. He just answered that question.</p> <p>6 MR. O'REAR: I don't think he did answer it.</p> <p>7 MR. LEMBKE: He just told you once it's</p> <p>8 under the authority and they start to construction,</p> <p>9 it's a utilization facility.</p> <p>10 MR. O'REAR: I'm not asking that question.</p> <p>11 BY MR. O'REAR:</p> <p>12 Q. Before construction, when it was designed,</p> <p>13 is it a utilization facility?</p> <p>14 A. It's designed for a utilization facility.</p> <p>15 Q. Is it a utilization facility? I'm not</p> <p>16 asking you if it's designed for one.</p> <p>17 I'm asking you: Is it a utilization</p> <p>18 facility?</p> <p>19 MR. LEMBKE: Hold on.</p> <p>20 BY MR. O'REAR:</p> <p>21 Q. Is it a utilization facility?</p>

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<p style="text-align: right;">Page 181</p> <p>1 MR. LEMBKE: Hold on, Mr. Burns.</p> <p>2 Mr. O'Rear, you are not going to yell at our</p> <p>3 witness.</p> <p>4 MR. O'REAR: Okay. Well, I --</p> <p>5 MR. LEMBKE: I think we need to take a</p> <p>6 five-minute break. We're going to take a five-minute</p> <p>7 break.</p> <p>8 (Whereupon, a recess ensued.)</p> <p>9 MR. O'REAR: Back on the record.</p> <p>10 BY MR. O'REAR:</p> <p>11 Q. Mr. Burns, let me see if I can simplify</p> <p>12 these questions for you and refer to specific points</p> <p>13 in time.</p> <p>14 A. Okay.</p> <p>15 Q. Do you understand that the design for</p> <p>16 Bellefonte was originally prepared sometime in the</p> <p>17 early '1970s?</p> <p>18 A. Yes, I do understand that because that's</p> <p>19 inherent in terms of the determinations that were made</p> <p>20 in the construction permit's review and determination.</p> <p>21 Q. And I want you to focus on that point in</p>	<p style="text-align: right;">Page 183</p> <p>1 A. But this is before they actually started</p> <p>2 pouring concrete or things like that?</p> <p>3 Q. Yes.</p> <p>4 A. I think -- that's an interesting question.</p> <p>5 I'm not sure, quite, if I faced that.</p> <p>6 I go back to -- I think certainly after</p> <p>7 construction begins and you're starting to proceed</p> <p>8 toward creation of the facility itself, you're</p> <p>9 certainly a utilization facility subject to NRC</p> <p>10 control on the site.</p> <p>11 Prior to that time, prior to basically</p> <p>12 disturbing the green field or however you want to</p> <p>13 characterize it, I think it's unclear.</p> <p>14 And part of why I'm saying that is, for</p> <p>15 example, there are certain activities that can</p> <p>16 proceed. For example, before a construction permit</p> <p>17 under a limited work authorization, that in themselves</p> <p>18 do not involve in effect safety related construction</p> <p>19 or actually matters that would be, you know, advancing</p> <p>20 the facility itself.</p> <p>21 You know, for example, building an</p>
<p style="text-align: right;">Page 182</p> <p>1 time which is prior to the issuance of any</p> <p>2 construction permit or prior to the beginning of any</p> <p>3 construction. Okay?</p> <p>4 A. Okay.</p> <p>5 Q. Was Bellefonte a utilization facility at</p> <p>6 that time?</p> <p>7 A. Before the construction permit?</p> <p>8 Q. Yes.</p> <p>9 A. No. There was no approval of the site to</p> <p>10 host a utilization facility prior to the issuance of</p> <p>11 construction permits in 1974.</p> <p>12 Q. Now, I want you to focus on the time that</p> <p>13 the construction permits were issued in 1974.</p> <p>14 A. Okay.</p> <p>15 Q. And before construction began. Okay?</p> <p>16 A. Okay.</p> <p>17 Q. Was Bellefonte a utilization facility at</p> <p>18 that time?</p> <p>19 A. And this is they held the construction</p> <p>20 permit?</p> <p>21 Q. Yes.</p>	<p style="text-align: right;">Page 184</p> <p>1 administrative building on the site or a parking lot</p> <p>2 or something.</p> <p>3 Q. Well, I am referring to any construction.</p> <p>4 So is it your testimony that it is not a utilization</p> <p>5 facility at the time the construction permits are</p> <p>6 issued and the site is not under construction?</p> <p>7 A. I'm saying that -- I'm saying that's an</p> <p>8 interesting question. I'm not sure I have had or I'm</p> <p>9 aware of an experience where that kind of dichotomy is</p> <p>10 drawn because basically when the construction permit</p> <p>11 is issued, it's issued for the construction of a</p> <p>12 utilization facility. And that -- from then on out,</p> <p>13 you are until you turn the permit or you turn on the</p> <p>14 reactor, you are subject to NRC's preliminary control</p> <p>15 and I think that's significant.</p> <p>16 Q. I'm not asking you about preliminary</p> <p>17 control. I'm asking about whether it is a utilization</p> <p>18 facility.</p> <p>19 So you're saying -- really, are you saying</p> <p>20 you can't answer that question or are you saying it's</p> <p>21 not a utilization facility at that point?</p>

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<p style="text-align: right;">Page 185</p> <p>1 A. Again, at what point? I want to be careful.</p> <p>2 Q. At the point that the construction permit</p> <p>3 had been issued but no construction had begun.</p> <p>4 A. I think it would be speculative to say that</p> <p>5 at that point it's not a utilization facility. And</p> <p>6 I'm not sure it matters because, again, you're subject</p> <p>7 to the NRC's control. You can't do anything about the</p> <p>8 site without the NRC's permission at that point.</p> <p>9 Q. I don't understand your answer that it is</p> <p>10 speculative to say it is not a utilization facility.</p> <p>11 A. Well, it's because the construction permit</p> <p>12 is for construction of a utilization facility. And</p> <p>13 yes, you know, I would concede at some point somebody</p> <p>14 actually starts digging a hole, pouring foundation,</p> <p>15 you know, putting in piles to support a building,</p> <p>16 bringing equipment on the site. And clearly under</p> <p>17 that circumstance, those circumstances that's</p> <p>18 proceeding, that's a utilization facility.</p> <p>19 Q. All right. Let me -- well, then let me ask</p> <p>20 you this. At what point of the construction process</p> <p>21 does it become a utilization facility?</p>	<p style="text-align: right;">Page 187</p> <p>1 BY MR. O'REAR:</p> <p>2 Q. Do you have an opinion on when or how much</p> <p>3 construction it takes for a plant site to become a</p> <p>4 utilization facility?</p> <p>5 A. No, I don't have a particular percentage</p> <p>6 that I would say qualifies it or disqualifies it.</p> <p>7 Again, you have to look at this holistically</p> <p>8 from the standpoint of historic application of NRC and</p> <p>9 its predecessor the AEC, regulatory framework for</p> <p>10 licensing for utilization facilities, nuclear power</p> <p>11 reactors. And that basically had, you know, some of</p> <p>12 the things we've cited here. That historically has</p> <p>13 said, we're treating it as a utilization facility</p> <p>14 under construction.</p> <p>15 Q. Okay. In your opinion, is there a certain</p> <p>16 point in a continuum of construction when the plant</p> <p>17 moves from not being a utilization facility to being a</p> <p>18 utilization facility?</p> <p>19 A. Characterized that way, no.</p> <p>20 What I would say is there is a significant</p> <p>21 point and that is when that facility is constructed to</p>
<p style="text-align: right;">Page 186</p> <p>1 MR. LEMBKE: I object, that mischaracterizes</p> <p>2 his testimony.</p> <p>3 MR. O'REAR: I don't think it does.</p> <p>4 MR. LEMBKE: He never said that that's --</p> <p>5 MR. O'REAR: All right. Then answer the</p> <p>6 question, then.</p> <p>7 BY MR. O'REAR:</p> <p>8 Q. Is it a utilization facility before</p> <p>9 construction is begun?</p> <p>10 A. Before construction is begun. You know, I</p> <p>11 think potentially -- potentially no. But, again, I'm</p> <p>12 not sure that it matters.</p> <p>13 Q. But it might matter, so that's why I'm</p> <p>14 asking.</p> <p>15 A. Not in this case.</p> <p>16 Q. I think so.</p> <p>17 MR. LEMBKE: Move to strike, Counsel.</p> <p>18 MR. O'REAR: Well, I move to strike his</p> <p>19 answer as argumentative.</p> <p>20 MR. LEMBKE: You're moving to strike the</p> <p>21 question?</p>	<p style="text-align: right;">Page 188</p> <p>1 the point where basically you're triggering the second</p> <p>2 level or the second phase of regulation, which is a</p> <p>3 potential to operate the facility. And that's the</p> <p>4 distinction in terms of phasing of a utilization</p> <p>5 facility.</p> <p>6 Q. Well, isn't the point triggered by the</p> <p>7 definition and that is either that statutory</p> <p>8 definition that it must be capable of making use of</p> <p>9 special nuclear material or the regulatory definition,</p> <p>10 it must be capable of conducting a nuclear reaction.</p> <p>11 Aren't those the trigger points?</p> <p>12 A. No, they are not the triggering points, and</p> <p>13 that is not the -- for practice.</p> <p>14 Again, I refer back to the Marble Hill</p> <p>15 decision and refer back to Mr. Case's letter to Dr.</p> <p>16 Asperger.</p> <p>17 Q. Well, how are the --</p> <p>18 MR. LEMBKE: Wait a minute. You're talking</p> <p>19 over the witness. You're not letting him finish the</p> <p>20 answer.</p> <p>21 MR. O'REAR: I didn't know he wasn't</p>

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<p style="text-align: right;">Page 189</p> <p>1 finished. I thought he finished.</p> <p>2 THE WITNESS: No. And those examples and</p> <p>3 longstanding precedent are how the Agency has treated</p> <p>4 and focused on it.</p> <p>5 And again, you have to view this</p> <p>6 holistically. You cannot do hair splitting between a</p> <p>7 utilization facility and the construction permit.</p> <p>8 It's viewed holistically as one thing. That's the</p> <p>9 regulatory control, and as long as there's someone</p> <p>10 who's interested in pursuing it, the NRC has authority</p> <p>11 over it and it doesn't give up that authority lightly</p> <p>12 -- without its permission.</p> <p>13 BY MR. O'REAR:</p> <p>14 Q. I'm not asking you about the authority and</p> <p>15 plenary jurisdiction. I'm not asking you about that.</p> <p>16 I'm asking you about at what point does this</p> <p>17 plant site meet the definition either under the</p> <p>18 statute or under the regulation of a utilization</p> <p>19 facility?</p> <p>20 A. Under construction it is considered a</p> <p>21 utilization facility. When it is ready for operation,</p>	<p style="text-align: right;">Page 191</p> <p>1 over the witness but I didn't hear the witness</p> <p>2 speaking. I thought he was finished with his answers.</p> <p>3 MR. LEMBKE: May he finish now?</p> <p>4 MR. O'REAR: Sure.</p> <p>5 MR. LEMBKE: If you remember.</p> <p>6 THE WITNESS: I'm not sure I remember what</p> <p>7 else I was going to have at this point.</p> <p>8 BY MR. O'REAR:</p> <p>9 Q. I'm not asking you about construction permit</p> <p>10 jurisdiction or preliminary jurisdiction. I'm asking</p> <p>11 you about the definition of a utilization facility.</p> <p>12 And so my question was this. When the</p> <p>13 initial concrete pad is poured at the plant site, is</p> <p>14 the plant site a utilization facility at that point in</p> <p>15 time?</p> <p>16 A. It is considered so for purposes of the</p> <p>17 construction permit.</p> <p>18 Q. It is considered a utilization facility as</p> <p>19 defined by statute and regulation at that time. Is</p> <p>20 that what you're saying?</p> <p>21 A. Defined by regulation and by historic</p>
<p style="text-align: right;">Page 190</p> <p>1 it is a utilization facility that is subject to then</p> <p>2 the operating license requirements of the Agency.</p> <p>3 Q. When it is under -- when it is under</p> <p>4 construction and the initial construction at the site</p> <p>5 is the pouring of a concrete pad, is the plant site a</p> <p>6 utilization facility at that point in time?</p> <p>7 A. It can't be used as one at that point but it</p> <p>8 is considered for purposes of NRC's governance of the</p> <p>9 construction permit. It's proceeding --</p> <p>10 Q. You're not understanding the question.</p> <p>11 MR. LEMBKE: No. Hold on a second, Mr.</p> <p>12 O'Rear.</p> <p>13 MR. O'REAR: Don't yell.</p> <p>14 MR. LEMBKE: In the last five minutes you've</p> <p>15 spoken over the witness while he's still answering the</p> <p>16 question, that's improper.</p> <p>17 MR. O'REAR: All right. Mr. Lembke, there</p> <p>18 may be some disruption in the video, but what I'm</p> <p>19 hearing is the witness has stopped.</p> <p>20 I did not hear him continuing to talk on</p> <p>21 either question I raised. So I apologize if I talked</p>	<p style="text-align: right;">Page 192</p> <p>1 practice. And that is who controls, who acts, who has</p> <p>2 the authority to act. That's the -- of the regulatory</p> <p>3 framework.</p> <p>4 Q. And so the historical framework you're</p> <p>5 referring to is primarily the Asperger letter?</p> <p>6 A. And the Marble Hill decision as well, I</p> <p>7 think references in there. I think it references the</p> <p>8 Commission -- decision.</p> <p>9 But again, what those look at is how the</p> <p>10 Agency looks at those who have a stake or presume to</p> <p>11 have a stake in a facility, and that may be under</p> <p>12 construction.</p> <p>13 Q. All right. Well, let me say this one time,</p> <p>14 and I want to make sure we're not missing each other.</p> <p>15 I want to make sure that I ask the right question and</p> <p>16 you answer that question and you're not answering some</p> <p>17 other question.</p> <p>18 When the construction began and they have</p> <p>19 poured on the concrete pad on the site, is that site</p> <p>20 at that point in time a utilization facility?</p> <p>21 MR. LEMBKE: Object, asked and answered.</p>

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<p style="text-align: right;">Page 193</p> <p>1 You can answer it again, Mr. Burns.</p> <p>2 THE WITNESS: Yes, laid out in my expert</p> <p>3 report and I emphasize that relates to the regulatory</p> <p>4 framework that is imposed through the construction</p> <p>5 permit, and that's how they're considered.</p> <p>6 And that's -- as I say, you know, based on</p> <p>7 my experience and based on, you know, the Marble Hill</p> <p>8 decision, the Asperger decision, I think that's</p> <p>9 correct.</p> <p>10 BY MR. O'REAR:</p> <p>11 Q. The Asperger decision in the letter from an</p> <p>12 acting director cannot change the statutory definition</p> <p>13 or the regulatory definition, can it?</p> <p>14 A. No. The Asperger -- no, the decision is</p> <p>15 that's not the authority of the director of a nuclear</p> <p>16 act or regulation. But it is consistent with the</p> <p>17 Agency's application and interpretation.</p> <p>18 Q. The administrative determinations in the</p> <p>19 Marble Hill and the Seabrook cases cannot change the</p> <p>20 statutory definition and the regulatory definition of</p> <p>21 a utilization facility, can it?</p>	<p style="text-align: right;">Page 195</p> <p>1 termination or until the end of the -- and subsequent</p> <p>2 decommission of the facility if construction is</p> <p>3 completed and operation is authorized." Do you see</p> <p>4 that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. What do you mean by plenary control?</p> <p>7 A. That means that the NRC has absolutely --</p> <p>8 absolute control over the activities on the site.</p> <p>9 Q. Okay.</p> <p>10 Does the NRC have plenary control over</p> <p>11 Nuclear Development as an applicant for transfer of</p> <p>12 the construction permit?</p> <p>13 A. I'm not sure I understand the question.</p> <p>14 Q. I don't know how I can state it any more</p> <p>15 directly.</p> <p>16 A. Please repeat the question.</p> <p>17 Q. Does the NRC have man plenary control over</p> <p>18 the Nuclear Development as an applicant for transfer</p> <p>19 of the construction permit?</p> <p>20 A. Well, to the extent that Nuclear Development</p> <p>21 is interested in interacting with the NRC to obtain</p>
<p style="text-align: right;">Page 194</p> <p>1 A. Well, they can't change it. They can't</p> <p>2 change the words of the statute. They can apply, in</p> <p>3 fact interpret -- interpret those conditions and they</p> <p>4 can in, terms of how they will be applied in the</p> <p>5 regulatory context.</p> <p>6 Q. Let's move on. Let's move to Paragraph 21</p> <p>7 of your report. Okay?</p> <p>8 A. Okay.</p> <p>9 Q. And I'd like to direct your attention to the</p> <p>10 sentence that begins in the middle of Paragraph 21</p> <p>11 starting with the word "effectively." Do you see</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. And I'll just read it. It says,</p> <p>15 "Effectively the regulatory framework under Section</p> <p>16 101, 103 and 185 of the Atomic Energy Act and the NRC</p> <p>17 implementing regulations means that once an</p> <p>18 authorization is issued to construct a utilization</p> <p>19 facility on a site, the entity holding the permit and</p> <p>20 the site are subject to the plenary control of the NRC</p> <p>21 until the permit is canceled due to project</p>	<p style="text-align: right;">Page 196</p> <p>1 such transfer, yes, it has that engagement to do so.</p> <p>2 Yes.</p> <p>3 Q. Okay. And in fact there's a rule that</p> <p>4 provides that the NRC has jurisdiction over applicants</p> <p>5 for licenses, correct?</p> <p>6 A. I'm not sure which rule you're referring to</p> <p>7 there.</p> <p>8 Q. Well, look in your materials there and look</p> <p>9 for 10 CFR 50.5.</p> <p>10 A. 50.5. Okay. Hold on. Okay.</p> <p>11 Q. Are you familiar with this CFR section?</p> <p>12 A. Yes, I am.</p> <p>13 Q. Does this section provide that any licensee</p> <p>14 or an applicant for a license may not -- and then it</p> <p>15 states in two provisions what they may not do and the</p> <p>16 sanctions that may be imposed by -- by the NRC?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And so for purposes of our case and</p> <p>19 the Nuclear Development application for a license,</p> <p>20 under at least A2 of this code of federal regulation,</p> <p>21 that Nuclear Development is subject to NRC</p>

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<p style="text-align: right;">Page 197</p> <p>1 jurisdiction and NRC sanction if it were to submit</p> <p>2 information regarding the application that it knows to</p> <p>3 be incomplete or inaccurate in some respect material</p> <p>4 to the NRC, right?</p> <p>5 A. That's correct. That's the full statement.</p> <p>6 Q. Okay. And if Nuclear Development were to</p> <p>7 represent in its application that it would not begin</p> <p>8 construction on the site or conduct any licensed</p> <p>9 activities on site until the construction permits have</p> <p>10 been transferred and violated that representation, the</p> <p>11 NRC has jurisdiction over that and can enforce the</p> <p>12 representation, correct?</p> <p>13 MR. LEMBKE: Object to the form, vagueness</p> <p>14 as to enforce the representation.</p> <p>15 MR. O'REAR: Okay.</p> <p>16 BY MR. O'REAR:</p> <p>17 Q. Could sanction or issue a cease and desist</p> <p>18 order to the Nuclear Development, correct?</p> <p>19 A. Okay. I'm going to have to answer that two</p> <p>20 ways because you asked me a question about the false</p> <p>21 statement provision in 50.5.</p>	<p style="text-align: right;">Page 199</p> <p>1 applicant may not engage in deliberate misconduct</p> <p>2 which causes or would have caused if not detected a</p> <p>3 licensee or applicant to be in violation of any rule,</p> <p>4 regulation or order?</p> <p>5 A. Right.</p> <p>6 Q. Or any term, condition or limitation of any</p> <p>7 license issued by the Commission.</p> <p>8 So the NRC is subject to -- excuse me, the</p> <p>9 Nuclear Development is subject to NRC's imposition of</p> <p>10 the construction permit requirements while over</p> <p>11 Nuclear Development, while it is an applicant and</p> <p>12 before the construction permits are issued. Is that</p> <p>13 correct?</p> <p>14 MR. LEMBKE: Objection, vague.</p> <p>15 MR. O'REAR: I don't think it's vague.</p> <p>16 BY MR. O'REAR:</p> <p>17 Q. You can answer.</p> <p>18 A. Well, I've got to -- you've got to</p> <p>19 understand the context again. From the standpoint --</p> <p>20 and I'll say it -- explain it all.</p> <p>21 One, as an applicant, Nuclear Development is</p>
<p style="text-align: right;">Page 198</p> <p>1 And yes, if it represented something, there</p> <p>2 might be a question. Again, depending on the timing</p> <p>3 of when the statement was made and when the unlawful</p> <p>4 conduct was conducted, there may be a question whether</p> <p>5 a false statement was made.</p> <p>6 But, second, and that would not be under</p> <p>7 this provision, that would be under other provisions.</p> <p>8 For example, basically a violation of Section 185 with</p> <p>9 respect to the necessity of a construction permit, the</p> <p>10 NRC could take enforcement action for undertaking</p> <p>11 activities which are not -- which it has not</p> <p>12 authorized.</p> <p>13 And there, it would be taking such action</p> <p>14 against Nuclear Development as a non-licensee.</p> <p>15 Because at that point, assuming it went forward and</p> <p>16 did construction, didn't do what it said it was going</p> <p>17 to do, it has no license authority and would then be</p> <p>18 sanctioned -- it could be sanctioned as undertaking an</p> <p>19 activity without proper NRC authorization.</p> <p>20 Q. Well, it -- in subparagraph one of Section</p> <p>21 A, this code section, it says that a licensee or an</p>	<p style="text-align: right;">Page 200</p> <p>1 subject to sanctions under the statute for making</p> <p>2 false statements. That I understand.</p> <p>3 And secondly, what I was trying to say is if</p> <p>4 Nuclear Development does not have authority to do</p> <p>5 certain things that require NRC authority, it is</p> <p>6 subject to sanction, even apart from this rule. But</p> <p>7 this rule is intended to sort of consolidate that. So</p> <p>8 that's what my answer was trying to address.</p> <p>9 MR. LEMBKE: Did you mark that exhibit or</p> <p>10 not?</p> <p>11 MR. O'REAR: It should be Exhibit 205.</p> <p>12 (Burns Exhibit No. 205 was marked for</p> <p>13 identification.)</p> <p>14 MR. O'REAR: So for the record, the exhibit</p> <p>15 which is 10 CFR 50.5 is marked as Exhibit 205.</p> <p>16 BY MR. O'REAR:</p> <p>17 Q. Directing your attention to Paragraph 23 of</p> <p>18 your report.</p> <p>19 A. Okay.</p> <p>20 Q. It begins discussing the construction</p> <p>21 permit, and then at the bottom of the Page 6 it says,</p>

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<p style="text-align: right;">Page 201</p> <p>1 "TVA's preliminary safety analysis report, PSAR, 2 Section 2.12 describes the particular -- in particular 3 that the exclusions area will be owned by the United 4 States and in custody of TVA." Do you see that? 5 A. Yes, I do. 6 Q. Now, the PSAR is not part of the 7 construction permit, is it? 8 A. It's not -- it's not specifically within it. 9 It is relevant to the construction permit as part of 10 the application. And eventually to go into operation 11 you have to update it to the "final safety analysis." 12 Q. The PSAR -- I'm sorry. 13 A. No, I'm done. 14 Q. I didn't -- if you were talking when I spoke 15 I didn't hear your word. I could see your mouth 16 moving, that's all. 17 The PSAR is not mentioned in the 18 construction permit, is it? 19 A. I don't specifically recall. 20 Q. Well, the PSAR is not a condition of the 21 construction permit, is it?</p>	<p style="text-align: right;">Page 203</p> <p>1 MR. LEMBKE: Well, that -- I object to the 2 form because that misstates the permit. 3 It would help if you introduced the permit 4 because the permit says as a condition, it talks about 5 the application in Section 3 and it talks about the 6 applicant's site in Section 2. 7 BY MR. O'REAR: 8 Q. Mr. Burns, is the PSAR in compliance 9 therewith a condition of compliance with the 10 construction permit? 11 MR. LEMBKE: Same objection. 12 THE WITNESS: I guess my answer would be 13 this is that while I don't -- while I don't see a 14 specific reference to the PSAR itself, it does refer 15 to the application, part of which is the PSR -- PSAR. 16 And what I would consider it is part of what we call 17 the licensing basis for the facility. 18 And the licensing basis is something that 19 basically the applicant when it receives the permit 20 has to follow. For example, I don't think that TVA -- 21 I forget what the facility is, I think a BWR, one of</p>
<p style="text-align: right;">Page 202</p> <p>1 A. Again, I have to look but I don't 2 specifically recall how it's referenced, if it's 3 referenced in the permits themselves. 4 It is significant because it is background 5 and forms the basis for the NRC's determination 6 whether or not to grant a permit or not. 7 Q. But you can't -- you're not opining 8 here today that the PSAR is a condition of the 9 construction permit, are you? 10 MR. LEMBKE: I object to the form. You mean 11 every -- every provision in it or a particular -- 12 MR. O'REAR: The construction permits as we 13 all know have conditions listed. And the PSAR is not 14 referenced or mentioned as part of the conditions of 15 the permit. 16 MR. LEMBKE: Well, I object to the form of 17 that because the permits reference the application. 18 And he just testified the PSAR is part of the 19 application. 20 MR. O'REAR: It is not a condition of the 21 permit, that's my question.</p>	<p style="text-align: right;">Page 204</p> <p>1 the series of a boiling water reactor. But if it 2 decided to change it to a, you know, a Westinghouse 3 pressurized reactor, it would go need that permission. 4 And part of that it is I think because, again, your 5 expectation and the governance is carrying out 6 activities as specified in the permit. 7 So the PSAR has relevance whether or not it 8 says -- and the PSARs aren't written for the most part 9 that every statement in it is a license condition 10 requirement. It describes what's going to go on at 11 the site, for example. 12 Q. I'll refer to Paragraph 24 of your report, 13 please. 14 A. Yes. 15 Q. At the end that you say, "Within its 16 statutory authority the NRC's choice of sanction is 17 quintessentially a matter of the Agency's sound 18 discretion." Do you see that? 19 A. Yes, I do. 20 Q. And whether or not to issue sanctions was a 21 matter of discretion before the acting director who</p>

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<p style="text-align: right;">Page 205</p> <p>1 wrote the Asperger letter, correct?</p> <p>2 A. I'm sorry. Repeat the question. I'm not</p> <p>3 sure I understood it.</p> <p>4 Q. Whether or not to issue sanctions, is it</p> <p>5 within the discretion of the acting director who</p> <p>6 issued the Asperger letter which we've been referring</p> <p>7 to? Is that correct?</p> <p>8 A. That's correct. That was within his</p> <p>9 authority.</p> <p>10 Q. Okay. And he found a technical violation</p> <p>11 but did not impose sanctions?</p> <p>12 A. Well, he issued a notice of violation which</p> <p>13 is a sanction.</p> <p>14 Q. Okay. But he didn't apply any remedial</p> <p>15 sanction, did he?</p> <p>16 A. Well, they had -- I wouldn't say he didn't</p> <p>17 apply remedial sanctions. I think because the</p> <p>18 applicants had to join in, the two missing</p> <p>19 applicants -- I think the two missing applicants had</p> <p>20 to do that and I think he saw that as being on the</p> <p>21 road to being accomplished. And that was part of the</p>	<p style="text-align: right;">Page 207</p> <p>1 that organization. He had responsibility in that</p> <p>2 office for licensing. And so a question of compliance</p> <p>3 on that type of matter would have come to him and he</p> <p>4 had the discretion to do that.</p> <p>5 Today as I say, there have been some changes</p> <p>6 in terms of how and where the enforcement authority</p> <p>7 would be carried out. So I can't say necessarily that</p> <p>8 it would have been -- that it would be the current</p> <p>9 director of the nuclear reactor regulation to do so.</p> <p>10 Q. Well, regardless of the title of the</p> <p>11 official, is your statement in Paragraph 24 that the</p> <p>12 NRC's choice of sanctions is quintessentially a matter</p> <p>13 of the Agency's sound discretion a true statement</p> <p>14 today?</p> <p>15 A. Yes.</p> <p>16 Q. Is it your opinion that if TVA had completed</p> <p>17 the closing of this transaction and transferred the</p> <p>18 site to Nuclear Development by deed, that that in and</p> <p>19 of itself would have violated the construction permit</p> <p>20 even where the maintenance and security and records</p> <p>21 management requirements were being maintained?</p>
<p style="text-align: right;">Page 206</p> <p>1 reason that he just issued the notice of violation.</p> <p>2 He did not impose civil penalty authority or</p> <p>3 impose civil penalty on it. He issued a notice of</p> <p>4 violation which is within the realm or the panoply of</p> <p>5 sanctions that the Agency can impose.</p> <p>6 Q. And he had that discretion at that time. Is</p> <p>7 that correct?</p> <p>8 A. Yes. He had the discretion because he was</p> <p>9 assigned the responsibility to respond to that</p> <p>10 petition for action, which is what he did in that</p> <p>11 letter.</p> <p>12 Q. And an acting director of reactor</p> <p>13 regulation, I'm not sure I have the title right --</p> <p>14 today has the same discretion, correct?</p> <p>15 A. Well, the assignment of responsibility may</p> <p>16 be differently -- we had some discussion of that this</p> <p>17 morning in terms of sanctions. But basically a senior</p> <p>18 official, and Mr. Case was a senior official, he was</p> <p>19 acting in that position and still the permanent</p> <p>20 director who, Harold Denton was assigned to that</p> <p>21 position. So -- but he was basically at the top of</p>	<p style="text-align: right;">Page 208</p> <p>1 A. Yes.</p> <p>2 MR. LEMBKE: Object to the form as to</p> <p>3 vagueness. Maintained by whom?</p> <p>4 MR. O'REAR: By either party. That they</p> <p>5 were -- that there was compliance by either party</p> <p>6 regarding maintenance, security and records</p> <p>7 management.</p> <p>8 BY MR. O'REAR:</p> <p>9 Q. My question is: Under that set of</p> <p>10 circumstances, would the transfer itself by deed from</p> <p>11 TVA to Nuclear Development violate the construction</p> <p>12 permit?</p> <p>13 A. Yes, I believe it would. I think that my</p> <p>14 report speaks to that.</p> <p>15 Q. And what harm would there be? What harm</p> <p>16 would there be to the public or to the workers or to</p> <p>17 the environment if that were to occur?</p> <p>18 MR. LEMBKE: Well, I object. That's a</p> <p>19 compound question and calls for speculation.</p> <p>20 BY MR. O'REAR:</p> <p>21 Q. What harm would there be to the public?</p>

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<p style="text-align: right;">Page 209</p> <p>1 MR. LEMBKE: Objection, calls for 2 speculation. 3 BY MR. O'REAR: 4 Q. What harm would there be to the public if 5 all the requirements for the construction permit were 6 being adhered to and TVA deeded the site to Nuclear 7 Development? 8 MR. LEMBKE: Well, I object to the form. 9 Calls for speculation and if adhered to by TVA or by 10 Nuclear Development? 11 MR. O'REAR: One or both -- both parties. 12 THE WITNESS: I think as I've explained in 13 my report, the harm is that basically it undermines 14 the regulatory authority of the NRC in terms of the 15 longstanding and typical contract for how that is -- 16 that is managed under the construction permit. 17 As I indicated, my belief is the 18 construction permit speaks to ownership by the United 19 States of the site itself. That has -- is nothing -- 20 Mr. Repka's described it as a historical point of fact 21 but it has something more than that. Because it's</p>	<p style="text-align: right;">Page 211</p> <p>1 is there to the public? 2 MR. LEMBKE: Objection, calls for 3 speculation. 4 BY MR. O'REAR: 5 Q. Can you answer? 6 A. Well, you'll have to repeat the question. 7 What harm to the public? 8 Q. The question is: If the conditions of the 9 construction permit are being maintained and adhered 10 to, what harm is there to the public to transfer the 11 site from TVA to Nuclear Development? 12 MR. LEMBKE: Objection to the form, calls 13 for speculation and is unclear as to who is 14 maintaining the permit. 15 MR. O'REAR: I said either party or both. 16 But that the conditions of the permit are being 17 satisfied and followed. 18 THE WITNESS: Well, I return to my prior 19 answer. 20 Again, it undermines basically the NRC's 21 jurisdiction. It's not clear to me, you know, in</p>
<p style="text-align: right;">Page 210</p> <p>1 part related to some of the reviews of the Agency with 2 respect to control of the site and those types of 3 things for purposes of part 100. 4 It also -- this is where I speak to the 5 bifurcation of control. So you've got a licensee in 6 terms of TVA as a construction permit holder who no 7 longer actually has title to the land or has legal 8 authority to go onto to land. And then you have 9 Nuclear Development who is not a licensee of the NRC, 10 who makes a promise that it won't do anything on a 11 site that it otherwise governed by the NRC. 12 And so, from my standpoint that sort of 13 blows away the normal construction that we have of 14 regulatory jurisdiction in a stepwise regulatory 15 process that we have in a situation. That's my 16 problem. 17 Q. Okay. But that didn't answer my question. 18 What harm is that to the public? 19 A. The harm to the public is undermining the 20 NRC's regulatory authority. 21 Q. What -- what risk of harm in terms of safety</p>	<p style="text-align: right;">Page 212</p> <p>1 terms of what the NRC's ability to get on the site, 2 who's taking care of it, if Nuclear Development as 3 basically a non-licensee, if it's taking care of the 4 maintenance documentation, preservation requirements. 5 It's not clear what basis there is for that or sort of 6 oversight. 7 So again, what I emphasize, it creates a 8 bifurcated situation. And that is really inconsistent 9 with longstanding NRC practice. 10 BY MR. O'REAR: 11 Q. I don't think you ever answered what harm 12 there is to the public. 13 A. I said the harm to the public is undermining 14 the NRC's jurisdictional authority and regulatory 15 imprint on the site. That's the harm to the public. 16 Q. That's the type of harm? 17 A. It is a vague idea and concept, and I look 18 at that in terms of public policy. And that's the 19 harm, from my standpoint, from a public policy 20 standpoint. 21 Q. So you're not talking about harm to the</p>

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<p style="text-align: right;">Page 213</p> <p>1 public in the sense of physical harm or exposure to</p> <p>2 radioactivity or any kind of threat to the security</p> <p>3 and safety of members of the public. You're referring</p> <p>4 to some sort of amorphous of harm to the public that</p> <p>5 undermines confidence in the NRC, or something like</p> <p>6 that?</p> <p>7 MR. LEMBKE: Same objection.</p> <p>8 THE WITNESS: It undermines the authority.</p> <p>9 And it's not a question so much of confidence in the</p> <p>10 NRC, it's the authority of the NRC.</p> <p>11 And what I don't know given the bifurcated</p> <p>12 process or circumstances created, what is the</p> <p>13 occurrence that I -- what is the assurance that the</p> <p>14 NRC has with respect to the maintenance and fidelity</p> <p>15 of those requirements up through it?</p> <p>16 So yes, is there -- because, again, we don't</p> <p>17 have an operating reactor and it -- we don't have a</p> <p>18 circumstance where you have the risk -- immediate risk</p> <p>19 of potential unsafe operation or a radioactive</p> <p>20 release, but you still need the control from the NRC</p> <p>21 at the outset over these activities.</p>	<p style="text-align: right;">Page 215</p> <p>1 this, you do that, we'll all sort of make it good and</p> <p>2 we promise not to do anything.</p> <p>3 Well, you do that, you're supposed to have a</p> <p>4 license.</p> <p>5 Q. You seem to make light of this promise, that</p> <p>6 it was a representation in an application that they</p> <p>7 would not conduct any licensing activities until the</p> <p>8 permits were issued, right?</p> <p>9 A. That's my understanding.</p> <p>10 Q. And you seem to characterize this with</p> <p>11 quotation marks as some sort of unenforceable promise.</p> <p>12 Is that what you're doing?</p> <p>13 A. Well, I'm saying is it's not clear to me</p> <p>14 exactly what that promise is. But it also -- what</p> <p>15 it's saying is that if you're otherwise supposed to</p> <p>16 have the permit, you ought to have the permit. That's</p> <p>17 what I'm saying.</p> <p>18 Q. All right.</p> <p>19 A. And that is well described in the expert</p> <p>20 report. The NRC has not typically relied on this sort</p> <p>21 of hair splitting of jurisdiction, assertion of</p>
<p style="text-align: right;">Page 214</p> <p>1 BY MR. O'REAR:</p> <p>2 Q. Well, what makes you think the NRC would</p> <p>3 lose control if the site were transferred? It still</p> <p>4 has control over TVA as the licensee and it still has</p> <p>5 control over Nuclear Development as the applicant. So</p> <p>6 what loss of control would there be by the NRC?</p> <p>7 MR. LEMBKE: I object to the form, lack of</p> <p>8 foundation for that question.</p> <p>9 You can answer.</p> <p>10 THE WITNESS: I think the NRC -- again, it's</p> <p>11 a question of what the ongoing interaction between</p> <p>12 Nuclear Development and TVA. But it's also -- the NRC</p> <p>13 now, it can walk on that site anytime it wants.</p> <p>14 It's not clear to me that that's the case</p> <p>15 under the circumstances -- the circumstances we're</p> <p>16 describing here. And the fact of the matter is it</p> <p>17 relies on the NRC having to potentially take action</p> <p>18 that it would not otherwise need to take in order to</p> <p>19 order to exert that regulatory control.</p> <p>20 And the fact of the matter it's tied to it.</p> <p>21 Ir -- we have not experienced sort of, oh, you do</p>	<p style="text-align: right;">Page 216</p> <p>1 jurisdictional authority.</p> <p>2 Oh, this one is an applicant, and so it can</p> <p>3 do a certain amount of things and we'll take care of</p> <p>4 it that way.</p> <p>5 Oh, this one is still the licensee</p> <p>6 responsible, so we'll hold them responsible.</p> <p>7 It's just historically, that isn't</p> <p>8 happening. It's not something I would advise the</p> <p>9 Commission to do.</p> <p>10 Q. Well, I move to strike that.</p> <p>11 You're not there now. Have you communicated</p> <p>12 these ideas to the NRC?</p> <p>13 A. No, I have not spoken to anyone at the NRC.</p> <p>14 Q. And when you keep referring to this promise,</p> <p>15 aren't you overlooking the very section that gives the</p> <p>16 NRC jurisdiction over Nuclear Development as an</p> <p>17 applicant under 10 CFR 50.2?</p> <p>18 A. No, I don't think I'm overlooking that.</p> <p>19 Because that provision goes towards -- the provision I</p> <p>20 think you're referring to, again -- let's pull it out.</p> <p>21 MR. LEMBKE: Caine, I think you meant to say</p>

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<p style="text-align: right;">Page 217</p> <p>1 50.5 didn't you?</p> <p>2 MR. O'REAR: I did. 50.5.</p> <p>3 THE WITNESS: The provision in 50.5?</p> <p>4 Okay. I've reread it.</p> <p>5 So again, what this recites is -- we're</p> <p>6 going to -- from the NRC's perspective, you either as</p> <p>7 an applicant, you need to conform, you need to be</p> <p>8 honest in your application. You can't misrepresent</p> <p>9 things.</p> <p>10 You as a licensee have to con- -- you have</p> <p>11 to be honest and you have to conform to the activity</p> <p>12 of your license. And if they're deliberate, there's</p> <p>13 deliberate misconduct, you're subject to sanctions for</p> <p>14 that.</p> <p>15 And it also says in effect if you're</p> <p>16 unlicensed but should be, which is like the situation</p> <p>17 here, we can come and take action.</p> <p>18 What I'm saying is my view is, yeah, NRC has</p> <p>19 its authority but it doesn't structure its regulatory</p> <p>20 programs. So, we'll do a little bit of this and a</p> <p>21 little bit of that, and we'll try to figure it out.</p>	<p style="text-align: right;">Page 219</p> <p>1 So that's why in this circumstance -- again,</p> <p>2 with Nuclear Development not having the permit, you</p> <p>3 know, having the site, it creates as I say this</p> <p>4 bifurcated situation which is not historically what</p> <p>5 the NRC likes to do.</p> <p>6 MR. O'REAR: Let's take a five-minute break,</p> <p>7 now. Is that okay with everybody?</p> <p>8 MR. LEMBKE: Yes.</p> <p>9 (Whereupon, a recess ensued.)</p> <p>10 MR. O'REAR: Back on the record.</p> <p>11 BY MR. O'REAR:</p> <p>12 Q. Mr. Burns, do you agree that the</p> <p>13 construction permit issued to TVA gives TVA the right</p> <p>14 to construct on the site identified in the permit?</p> <p>15 A. Yes, I agree.</p> <p>16 Q. Do you agree that the construction permits</p> <p>17 themselves do not confer ownership of the site to TVA?</p> <p>18 A. Well, I think the permit describes ownership</p> <p>19 as in the United States. The particular provision on</p> <p>20 it.</p> <p>21 Q. Well --</p>
<p style="text-align: right;">Page 218</p> <p>1 It has traditionally looked at the construction permit</p> <p>2 as something you have to have before you do anything.</p> <p>3 Q. Okay. If TVA were to transfer the plant</p> <p>4 site to Nuclear Development now, do you really have</p> <p>5 any question that the NRC would not have access to the</p> <p>6 site?</p> <p>7 A. I don't know. Again, I mean, you know, I</p> <p>8 presume it's in Nuclear Development's interest but</p> <p>9 there -- what I would normally call, you know, the</p> <p>10 footprint is not necessarily there as yet.</p> <p>11 Q. So are you referring to some theoretical</p> <p>12 defiance by Nuclear Development of NRC's right to</p> <p>13 access the site as being the problem here and the</p> <p>14 basis for your opinion?</p> <p>15 A. Well, that informs my opinion when I say</p> <p>16 some theoretical basis. We don't regulate on the</p> <p>17 basis of everybody doing what they're supposed to be</p> <p>18 doing.</p> <p>19 Sometimes what have to think of as</p> <p>20 regulators, what's the consequence of not following</p> <p>21 the guidelines?</p>	<p style="text-align: right;">Page 220</p> <p>1 A. I don't know.</p> <p>2 Q. -- the permit does not confer ownership,</p> <p>3 does it?</p> <p>4 A. Well, I guess no. The permit does not</p> <p>5 confer ownership in the sense it's not a conveyance</p> <p>6 of -- it's not a property -- real property</p> <p>7 transaction.</p> <p>8 Q. Has the NRC ever issued construction permit</p> <p>9 to licensees who were not owners of the site where the</p> <p>10 construction was to occur?</p> <p>11 A. I am not aware of any. The only caveat I</p> <p>12 would add here is that consistent with, for example,</p> <p>13 the Marble Hill decision and ongoing practice, you</p> <p>14 know, co-licensees who must be on the license but who</p> <p>15 may not be the ones who are actually conducting the</p> <p>16 construction or opening the operation, that may be the</p> <p>17 case with them.</p> <p>18 Q. Okay.</p> <p>19 A. I haven't looked at a particular permit in</p> <p>20 some time.</p> <p>21 Q. So the NRC has issued construction permits</p>

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<p style="text-align: right;">Page 221</p> <p>1 to persons who would be performing the construction,</p> <p>2 who are not owners of the site where the construction</p> <p>3 is still occurring, correct?</p> <p>4 A. I don't think that's what I said.</p> <p>5 Q. I thought that's what you said.</p> <p>6 A. No, what I said is that the permits have</p> <p>7 been issued to the owners, co-owner and one, for</p> <p>8 example, who is particularly authorized or has that</p> <p>9 property. But what I said was -- the additional</p> <p>10 comment I made was you may have co-owners who</p> <p>11 eventually are interested in taking the benefit of the</p> <p>12 electricity production and then consistent with Marble</p> <p>13 Hill and such other decisions, they must be</p> <p>14 co-licensees on the permit but they may not be ones</p> <p>15 who have ownership of the license itself.</p> <p>16 Q. Are you aware of any situation where</p> <p>17 construction permits have been issued and the owners</p> <p>18 of the property were not co-licensees?</p> <p>19 A. Not particularly, no. I'm not aware of</p> <p>20 anything in particular.</p> <p>21 Q. Does the NRC routinely issue operating</p>	<p style="text-align: right;">Page 223</p> <p>1 BY MR. O'REAR:</p> <p>2 Q. I think you're moving away from the mic of</p> <p>3 something. I don't know if anybody else is</p> <p>4 experiencing that. Okay.</p> <p>5 Are you saying that there are no instances</p> <p>6 where the NRC has granted an operating license to an</p> <p>7 entity that is not the owner of a nuclear plant being</p> <p>8 operated?</p> <p>9 MR. LEMBKE: Objection, asked and answered.</p> <p>10 THE WITNESS: And my answer is, I am not</p> <p>11 aware of any offhand.</p> <p>12 BY MR. O'REAR:</p> <p>13 Q. Let's look at the Marble Hill case for a</p> <p>14 minute.</p> <p>15 A. Okay.</p> <p>16 Q. It's Exhibit 125. Should be in your stack</p> <p>17 there.</p> <p>18 A. Yes, I've got it. I've got it.</p> <p>19 Q. Just to be clear for anyone who looks at</p> <p>20 this or a Court who looks at it, the opinion is issued</p> <p>21 by The Atomic Safety and Licensing Appeal Board,</p>
<p style="text-align: right;">Page 222</p> <p>1 licenses to parties who are not owners of the nuclear</p> <p>2 plant?</p> <p>3 A. No, the license is issued to the owner.</p> <p>4 There may be authorization for someone to contract to</p> <p>5 conduct the actual operation.</p> <p>6 An example I would give -- an example I</p> <p>7 would give, I believe for example, the Cooper --</p> <p>8 Plant, Exelon Corporation has basically managed</p> <p>9 operation -- the operations as a contractor to -- in</p> <p>10 Nebraska, a public co-op or whatever it is.</p> <p>11 Q. Does Exelon -- does Exelon hold the</p> <p>12 operating license for that plant?</p> <p>13 A. I don't believe it holds an operating</p> <p>14 license. I believe what it does is it holds -- it is</p> <p>15 licensed, it is authorized to conduct those operations</p> <p>16 on behalf of the owner.</p> <p>17 Q. Okay.</p> <p>18 A. You're breaking up on me.</p> <p>19 MR. O'REAR: Can the court reporter</p> <p>20 understand the witness?</p> <p>21 THE REPORTER: Yes, I understood him.</p>	<p style="text-align: right;">Page 224</p> <p>1 correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And that would be three administrative law</p> <p>4 judges who are within the NRC, correct?</p> <p>5 A. That's correct. The appeal board existed</p> <p>6 from about 1969 to 1991 as an intermediate appellate</p> <p>7 level in the NRC's adjudicatory system or</p> <p>8 administrative hearing system. So they would hear</p> <p>9 appeals. They did not hear original -- like the trial</p> <p>10 level, which was the licensing board which we</p> <p>11 discussed earlier.</p> <p>12 So they would decide appeals and then there</p> <p>13 was in effect like for lack of a better term a</p> <p>14 certiorari type review by the Commission at its</p> <p>15 discretion of the appeal board.</p> <p>16 Q. And so the appeal board, it's between the</p> <p>17 trial level and the Commission level, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. And so a decision of the appeal board</p> <p>20 would not be considered a decision of the Commission</p> <p>21 or the commissioners of the NRC, correct?</p>

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<p style="text-align: right;">Page 225</p> <p>1 A. Well, it is not a decision of the</p> <p>2 commissioners but it was considered precedent within</p> <p>3 the Agency.</p> <p>4 Q. Okay. And again, this is all within the</p> <p>5 administrative process, not -- not a court of law,</p> <p>6 correct?</p> <p>7 A. That's correct. This is part of the NRC's</p> <p>8 administrative hearing processes.</p> <p>9 Q. Do you agree that the sole question in this</p> <p>10 case is whether co-owners of a site must be</p> <p>11 co-licensees under a construction permit when it was</p> <p>12 issued?</p> <p>13 A. Well, that was a major issue. I don't</p> <p>14 recall without going back and reading the decision</p> <p>15 again whether it's some other issue that -- that was</p> <p>16 decided.</p> <p>17 There were more issues I remember in Marble</p> <p>18 Hill involving the boundary dispute between the</p> <p>19 Commonwealth of Kentucky and the State of Indiana</p> <p>20 which wound up going -- it was one of those original</p> <p>21 jurisdictions in the cases in the Supreme Court.</p>	<p style="text-align: right;">Page 227</p> <p>1 Q. And just to clarify it, the Seabrook case</p> <p>2 was a decision by what body?</p> <p>3 A. As I recall it was a decision by the</p> <p>4 Commission itself.</p> <p>5 Q. But it was an administrative appeal. It's</p> <p>6 not a court case. Is that correct?</p> <p>7 A. No, it's an final decision of the -- of the</p> <p>8 Commission in an adjudication. I don't recall whether</p> <p>9 that particular case at that point in time was</p> <p>10 appealed to the court of appeals.</p> <p>11 Q. Well, you certainly would have cited that if</p> <p>12 it were, wouldn't you, in your research? You would</p> <p>13 have cited the court of appeals decision if it went to</p> <p>14 the court of appeals, would you not?</p> <p>15 A. Yes, I would have.</p> <p>16 Q. Okay. You didn't cite a court of appeals</p> <p>17 decision in Seabrook, did you?</p> <p>18 A. As I recall I did not.</p> <p>19 Q. And in that case the appeal panel held that</p> <p>20 the financial qualifications of the future owner of a</p> <p>21 site would be reviewed by the NRC in connection with</p>
<p style="text-align: right;">Page 226</p> <p>1 It may be that that -- what -- but I don't</p> <p>2 recall without going back and reading it.</p> <p>3 Q. The Marble Hill case did not involve a</p> <p>4 transfer of ownership situation, did it?</p> <p>5 A. Well, it did not -- in terms of, only in the</p> <p>6 sense that it didn't -- we'll say the circumstance</p> <p>7 where you have an existing licensee and it's being</p> <p>8 transferred to another licensee. It is in my view</p> <p>9 related to transfers from the standpoint, do you need</p> <p>10 to be on the construction permit as a co-owner,</p> <p>11 co-licensee? So at some point there's a</p> <p>12 transaction -- you know, a transaction.</p> <p>13 Q. Marble Hill did not involve a question of</p> <p>14 whether a site can be transferred before a</p> <p>15 construction permit is issued to transferee, did it?</p> <p>16 A. The specific scenario, no. But I believe it</p> <p>17 is germane to that question.</p> <p>18 Q. Now, you mentioned in your testimony the</p> <p>19 Seabrook case. That was referenced in the Marble Hill</p> <p>20 case?</p> <p>21 A. Yes, I believe it was.</p>	<p style="text-align: right;">Page 228</p> <p>1 the future approval of a license, correct?</p> <p>2 A. The amendment I would make to your statement</p> <p>3 and then I would generally agree with it is that was a</p> <p>4 decision of the Commission, not of the appeal panel.</p> <p>5 Q. Okay. Pardon me.</p> <p>6 A. There may have been an appeal from the lower</p> <p>7 -- a lower tribune.</p> <p>8 Q. Okay. And aren't the financial</p> <p>9 qualifications of Nuclear Development being reviewed</p> <p>10 by the NRC prior to the issuance of any construction</p> <p>11 permit to Nuclear Development?</p> <p>12 A. They would have to be -- yes, they would</p> <p>13 have to be reviewed prior to authorization for</p> <p>14 transfer.</p> <p>15 Q. So there's nothing about Seabrook that's</p> <p>16 inconsistent with what's going on here, is there?</p> <p>17 A. Well, in Seabrook -- what happened in Sea</p> <p>18 Brook you had the interveners or those against</p> <p>19 Seabrook who, as I recall it, were making an appeal</p> <p>20 and said some stated -- that there was some stated</p> <p>21 possibility that certain other, I think small co-ops</p>

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1 or small utilities would join in on the Seabrook plant
 2 and they wanted action by the Commission at that point
 3 in time. At that point in time they finally raise
 4 their appeal, and that's what the Commission rejected.
 5 It said, we'll deal with that when the time comes.
 6 And the assurance that the Commission was
 7 giving, I think, to the interveners who appealed was,
 8 you have to have the NRC's approval to be on that
 9 construction permit and to be a part of that project.
 10 And that's what they're saying and that's
 11 what it was cited for in Marble Hill and that's why I
 12 referenced -- I referenced it and probably referenced
 13 it in the context of Marble Hill.
 14 Q. Let me direct your attention to Exhibit 124,
 15 which is the Asperger letter and --
 16 MR. LEMBKE: Hold on. Let me find it.
 17 BY MR. O'REAR:
 18 Q. You got it there?
 19 A. Yes, I do.
 20 Q. You're familiar with it, right?
 21 A. Yes, I am.

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1 Q. And you cited it in your report, correct?
 2 A. That is correct.
 3 Q. The date, it seems to be a little obscured
 4 in the exhibit. Do you know the date of the letter?
 5 A. Yes, I think I determined -- and I think I
 6 listed it in my report, and I think it's something
 7 like March 6, 1978. I forget exactly, it's at the
 8 back of my report, the exhibits to the report.
 9 March 3rd, 1968.
 10 Q. And this is when you referred to Mr. Case
 11 earlier, this is the person who signed the letter,
 12 last page of the exhibit, Ed G. Case?
 13 A. Correct.
 14 Q. Acting director Office of Nuclear Reactor
 15 Regulation?
 16 A. Correct.
 17 Q. And the letter's addressed to a Dr. Robert
 18 Dr. Asperger, correct?
 19 A. Correct.
 20 Q. Hence, that's why you're calling it the
 21 Asperger letter, right?

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1 A. Yes.
 2 Q. Now, he's a private party, obviously. Who
 3 was Asperger?
 4 A. He is -- I recall him from reading some
 5 other decisions of the Agency related to that time.
 6 Basically he was a guy who was against the nuclear
 7 power plant and lived up I forget -- he was in
 8 Midland, Michigan by where the plant was being built.
 9 But that's what it was.
 10 So, under the NEC's rules which were adopted
 11 I believe in 1974 by the Atomic Energy Commission, the
 12 Agency provided a -- in 10 CFR 2.206 it provided for
 13 any person to file a petition with the Agency asking
 14 for enforcement action. So that's what this was.
 15 So Dr. Asperger, I think the only connection
 16 with the, I think Detroit -- the Detroit Edison plant
 17 in question here was he didn't like them. So he was
 18 asking for enforcement action against Detroit Edison
 19 and others.
 20 Q. The Detroit Edison plant site involved here
 21 was the Enrico Fermi plant?

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1 A. Got it.
 2 Q. And if there's been reference in other
 3 correspondence or other documents in this case to the
 4 Fermi letter or the Fermi decision, is that a
 5 reference to this letter as far as you know?
 6 MR. LEMBKE: I'm going to object to the
 7 form. How could he possibly have the foundation to
 8 answer that?
 9 MR. O'REAR: Okay. Well --
 10 BY MR. O'REAR:
 11 Q. Are you aware of any other authority that's
 12 been relied on by TVA or by you called Fermi that's
 13 something other than this letter?
 14 A. I don't see any that are listed in my
 15 exhibit.
 16 As I say -- I said a couple minutes ago, I
 17 believed I looked at a couple of decisions related to
 18 the Fermi -- to Fermi. There were some, I think,
 19 district court actions, there were probably some other
 20 NRC things but they were -- they didn't really go to
 21 the issues that are described in Mr. Case's letter to

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<p style="text-align: right;">Page 233</p> <p>1 Dr. Asperger.</p> <p>2 Q. Okay. Let me direct your attention, then, to</p> <p>3 Page 4 of this exhibit, and the footnote on Page 4.</p> <p>4 A. Yes, I got it.</p> <p>5 Q. And before I ask this question, though.</p> <p>6 So Dr. Asperger was just a member of the</p> <p>7 public who complained about something regarding this</p> <p>8 plant, correct?</p> <p>9 A. Yes.</p> <p>10 Q. He was not a licensee or an owner or</p> <p>11 involved in any transaction related to the plant, was</p> <p>12 he?</p> <p>13 A. No. He was, as they say, a third party</p> <p>14 raising a complaint about Detroit Edison.</p> <p>15 Q. Okay. And Mr. Case -- Mr. Case in this</p> <p>16 footnote -- do you have it before you?</p> <p>17 A. Yes, I do.</p> <p>18 Q. I'm going to read the first sentence. It</p> <p>19 says, "We disagree with the argument that Section 101</p> <p>20 of the Act has not been violated because interest in a</p> <p>21 utilization facility under construction has been</p>	<p style="text-align: right;">Page 235</p> <p>1 utilization facility under construction is a right to</p> <p>2 own a utilization facility if completed." Did I read</p> <p>3 that correctly?</p> <p>4 A. I believe so.</p> <p>5 Q. So he three times refers to a utilization</p> <p>6 facility under construction, correct?</p> <p>7 A. He refers to a utilization facility under</p> <p>8 construction.</p> <p>9 Q. So his premise and the starting point for</p> <p>10 what he's addressing and for what he's responding to</p> <p>11 assumes this is a utilization facility, and that it is</p> <p>12 under construction because he said it three times</p> <p>13 there, right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And so what he's saying in this</p> <p>16 footnote is that if a facility is far enough along in</p> <p>17 its construction to be considered a utilization</p> <p>18 facility, then we will consider it a utilization</p> <p>19 facility, even though it is not complete. Isn't that</p> <p>20 exactly what he's saying?</p> <p>21 MR. LEMBKE: Object to the form, lack of</p>
<p style="text-align: right;">Page 234</p> <p>1 acquired rather than an interest in a completed</p> <p>2 utilization facility."</p> <p>3 Okay. The argument, then, he's referring to</p> <p>4 is an argument of a utilization facility under</p> <p>5 construction as opposed to a completed utilization</p> <p>6 facility, right?</p> <p>7 A. Say that again, please.</p> <p>8 Q. The point that Mr. Case is responding to is</p> <p>9 just what is stated there in the first sentence, "We</p> <p>10 disagree with the argument that Section 101 of the Act</p> <p>11 has not before we violated because an interest in a</p> <p>12 utilization facility under construction has been</p> <p>13 acquired rather than an interest in a completed</p> <p>14 utilization facility." Right, that was the issue he</p> <p>15 was addressing in this footnote?</p> <p>16 A. That -- well, partly.</p> <p>17 Q. And then he says in the last part of the</p> <p>18 footnote, "Moreover it has been the longstanding</p> <p>19 practice of the Commission to consider a utilization</p> <p>20 facility under construction to be a utilization</p> <p>21 facility. Therefore in our view, a right to own a</p>	<p style="text-align: right;">Page 236</p> <p>1 foundation. That is not exactly what he's saying.</p> <p>2 BY MR. O'REAR:</p> <p>3 Q. Isn't that -- I mean, you've relied on this</p> <p>4 letter. I'm asking you about the letter. Isn't that</p> <p>5 what the letter says?</p> <p>6 MR. LEMBKE: No. You're engaging in wishful</p> <p>7 thinking as to what the letter says.</p> <p>8 MR. O'REAR: That's not an objection, Matt.</p> <p>9 MR. LEMBKE: Object, lack of foundation.</p> <p>10 I'm responding to your comment.</p> <p>11 MR. O'REAR: Okay. Well --</p> <p>12 BY MR. O'REAR:</p> <p>13 Q. Isn't that what Mr. Case is saying in this</p> <p>14 letter?</p> <p>15 A. I don't believe so. Because, again, I look</p> <p>16 at the last sentence, sentence or two in the footnote</p> <p>17 and it says one under construction is a utilization</p> <p>18 facility. And that's how we have traditionally</p> <p>19 considered it.</p> <p>20 Q. He says a utilization facility under</p> <p>21 construction, is a right to own a utilization facility</p>

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<p style="text-align: right;">Page 237</p> <p>1 if complete.</p> <p>2 So what he's saying there is if it's a</p> <p>3 utilization facility that is not complete but has</p> <p>4 reached the point in construction to be a utilization</p> <p>5 facility, then it is still a utilization facility.</p> <p>6 Isn't that exactly what he's saying?</p> <p>7 MR. LEMBKE: Now, I object again to lack of</p> <p>8 foundation, "that's exactly what he's saying."</p> <p>9 BY MR. O'REAR:</p> <p>10 Q. Isn't that a reasonable and accurate</p> <p>11 interpretation of this letter?</p> <p>12 A. Again, the interpretation that it has to be</p> <p>13 capable of operation?</p> <p>14 Q. The interpretation -- I'm not interpreting.</p> <p>15 I'm just saying what he says there. He says, "It is a</p> <p>16 utilization facility under construction." He does not</p> <p>17 say it is a site or that a site that has not reached</p> <p>18 the point of being a utilization facility is</p> <p>19 considered a utilization facility.</p> <p>20 MR. LEMBKE: I move to strike that. That's</p> <p>21 a statement, not a question.</p>	<p style="text-align: right;">Page 239</p> <p>1 utilization facility under construction, doesn't it.</p> <p>2 A. I'm not sure I understand the difference</p> <p>3 between our -- the semantic difference between what</p> <p>4 you're saying and what I'm saying.</p> <p>5 Q. I'm saying that the decision means that if a</p> <p>6 plant is far enough along in construction to be</p> <p>7 determined a utilization facility, we still deem a</p> <p>8 utilization facility even though it is not fully</p> <p>9 complete. Isn't that what is said by this footnote?</p> <p>10 A. Yes. He's saying one under construction is</p> <p>11 a utilization facility.</p> <p>12 Q. You keep saying one. I don't see the</p> <p>13 word "one" there. I see the words "utilization</p> <p>14 facility under construction." I'm sorry.</p> <p>15 A. -- speak to the level or the extent of</p> <p>16 completion of the facility.</p> <p>17 Q. Are you saying that this letter stands for</p> <p>18 the proposition that at any degree of construction</p> <p>19 such as the example I posed earlier in the deposition,</p> <p>20 of laying the concrete pad in the initial part of</p> <p>21 construction creates the utilization facility, and</p>
<p style="text-align: right;">Page 238</p> <p>1 MR. O'REAR: Well, that was a question.</p> <p>2 MR. LEMBKE: I don't know what the question</p> <p>3 is.</p> <p>4 BY MR. O'REAR:</p> <p>5 Q. Doesn't it say that?</p> <p>6 MR. LEMBKE: Same objection, lack of</p> <p>7 foundation, misstates the evidence.</p> <p>8 THE WITNESS: Well, I think I disagree</p> <p>9 because, again, I read the last -- his penultimate</p> <p>10 sentence and one under construction is considered to</p> <p>11 be a utilization facility.</p> <p>12 BY MR. O'REAR:</p> <p>13 Q. Where does it say one under construction?</p> <p>14 Where does it say that?</p> <p>15 A. A utilization -- it says, in the first</p> <p>16 sentence of the second sentence. "A utilization</p> <p>17 facility under construction to be a utilization</p> <p>18 facility."</p> <p>19 BY MR. O'REAR:</p> <p>20 Q. That's exactly what I read.</p> <p>21 You said one under construction. It says a</p>	<p style="text-align: right;">Page 240</p> <p>1 that's what Mr. Case meant by this footnote?</p> <p>2 A. I think what Mr. Case meant is if you're</p> <p>3 going to be part of the ownership, you got to be</p> <p>4 licensed. That's what he's saying.</p> <p>5 Q. Okay. Well, he doesn't say that, does he?</p> <p>6 A. Well, I think he does. He finds in effect</p> <p>7 that the applicant -- you know, the co-applicants who</p> <p>8 are not on the license yet, that's the basis for him</p> <p>9 fining for noncompliance.</p> <p>10 Q. Okay. Well, Nuclear Development is on the</p> <p>11 application, correct?</p> <p>12 A. Well, they have applied for a transfer of a</p> <p>13 construction permit, that's correct.</p> <p>14 Q. To your knowledge, are there any co-parties</p> <p>15 with Nuclear Development that are not on the</p> <p>16 application that will be involved in the construction</p> <p>17 of the site?</p> <p>18 A. You'll have to repeat the question.</p> <p>19 Q. In our case are you aware of any parties</p> <p>20 other than Nuclear Development that would need to be</p> <p>21 on the application because they would need to be</p>

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<p style="text-align: right;">Page 241</p> <p>1 licensed in addition to Nuclear Development to 2 construct on the site?</p> <p>3 A. I'm not aware. Nuclear Development would 4 meet, and based on my review of some of the 5 application and some of the back and forth with the 6 NRC staff on it, there are, you know, certain 7 contractors and things like that, when I say I use the 8 word "approve" lightly or broadly, that they would 9 need to be approved in the sense that the NRC would 10 need to accept the -- going forward, the processes 11 were -- the structure for things like quality 12 assurance program and all that, which I know would be 13 by contract.</p> <p>14 Q. But our case, as you understand it, does not 15 involve an issue of co-owners or co-licensees, does 16 it?</p> <p>17 A. Well, no. The transfer is from TVA to 18 Nuclear Development as a new authorized permit holder.</p> <p>19 Q. If you would now look at the Zimmer decision 20 which should be in your stack. It's Exhibit 132.</p> <p>21 A. Yeah.</p>	<p style="text-align: right;">Page 243</p> <p>1 A. I'd have to find it. Yes. Yes, I see it 2 now.</p> <p>3 Q. And it says there, the third line from the 4 bottom on the first page, "Only the NRC staff 5 responded to this motion in its April 9, 1984 6 response. Staff points out that Section 11CC of the 7 Atomic Energy Act defines a utilization facility as, 8 'One which is capable of making use of special nuclear 9 material.'" Correct?</p> <p>10 A. Yes, it says that.</p> <p>11 Q. And that expresses, then, the NRC staff's 12 view of the definition of utilization facility, 13 correct?</p> <p>14 MR. LEMBKE: Objection, lack of foundation.</p> <p>15 BY MR. O'REAR:</p> <p>16 Q. Well, when you speak of all this wholistic 17 precedent within the NRC based on interpretations by 18 staff, this case shows that staff interpreted and used 19 the statutory definition being one capable of making 20 use of special nuclear material. Is that correct?</p> <p>21 MR. LEMBKE: Same objection.</p>
<p style="text-align: right;">Page 242</p> <p>1 (Burns Exhibit No. 132 was marked for 2 identification.)</p> <p>3 BY MR. O'REAR:</p> <p>4 Q. All right.</p> <p>5 A. I have it.</p> <p>6 Q. Pardon me just give a minute, please.</p> <p>7 Do you agree that this Zimmer decision 8 stands for the proposition that a plant that was once 9 a utilization facility can be converted to something 10 that is not a utilization facility by disabling it so 11 that it cannot make use of special nuclear material?</p> <p>12 A. I would agree that the decision deals with 13 assuring that a utilization facility is no longer 14 capable or put in a condition such that it would not 15 be capable of that use so that the NRC can walk away 16 from it.</p> <p>17 Q. And in analyzing whether this -- such a 18 applicant plant would be a utilization facility, the 19 staff, as adopted by this licensing board decision, 20 cited the statutory definition under the Atomic Energy 21 Act of a utilization facility, is that correct?</p>	<p style="text-align: right;">Page 244</p> <p>1 THE WITNESS: Well, I agree according to the 2 licensing board that they referenced the definitional 3 section within the Atomic Energy Act. And the reason 4 for that that in this case you have the Zimmer plant 5 which is extraordinarily far along; it has fuel on the 6 site and the board's decision says it was in the 7 condition that it basically needed to be undone. And 8 it goes again, to this -- this is not a conflict with 9 Marble Hill, this not a conflict with the Asperger 10 letter. This basically is a reflection of the 11 circumstances before the Agency at that time.</p> <p>12 Cincinnati Gas and Electric threw in the 13 towel, decided not to proceed with operation of the 14 Zimmer plant. It was extraordinarily far along. So 15 what the NRC needed was assurances that you could walk 16 away, could walk away from the plant so it would not 17 be capable of sustaining a nuclear reaction and thus, 18 be inoperable utilization facility. And I think 19 that's what they did in this opinion. Those were the 20 conditions of basically letting Cincinnati Gas and 21 Electric turn in its licenses.</p>

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<p style="text-align: right;">Page 245</p> <p>1 I don't even recall here, they may have even</p> <p>2 had -- I'm not sure whether they had the operating</p> <p>3 license yet or not or just still the CP. But they</p> <p>4 obviously had some license to possess radioactive</p> <p>5 material in the form of new fuel.</p> <p>6 Q. Well, what you've just said fully supports</p> <p>7 Nuclear Development's position, doesn't it? I mean,</p> <p>8 the Bellefonte plant is not capable of operation as a</p> <p>9 nuclear reactor. It's not capable of using special</p> <p>10 nuclear material, right?</p> <p>11 A. Not in its current condition. But what I</p> <p>12 just said does not support the view of Nuclear</p> <p>13 Development because, as I said before, what you have</p> <p>14 here is this is the end game or the end state and is</p> <p>15 deciding to put the facility into that end state.</p> <p>16 If you have a live -- the Zimmer, the</p> <p>17 Cincinnati Gas and Electric plant has permits over --</p> <p>18 that are subject to NRC oversight with respect to the</p> <p>19 Zimmer plant, which then did not go into operation.</p> <p>20 Again, what -- it's the permit that matters.</p> <p>21 Q. Well, sir, we will state and have stated</p>	<p style="text-align: right;">Page 247</p> <p>1 if those steps were taken, this plant would not be a</p> <p>2 utilization facility. Is that correct?</p> <p>3 A. It accepted that for purposes of terminating</p> <p>4 the NRC licenses subject -- that the plant was subject</p> <p>5 to.</p> <p>6 Q. Okay. And why is that a distinction in this</p> <p>7 case?</p> <p>8 A. I don't think it's a distinction. It's what</p> <p>9 they did.</p> <p>10 Q. Why is it a distinction from our case?</p> <p>11 A. If you're talking about a distinction with</p> <p>12 the Nuclear Development case, there's not intention</p> <p>13 here of terminating the plant. It's basically keeping</p> <p>14 this thing alive until the transfer can occur or a</p> <p>15 transfer's approved and specific authorization, which</p> <p>16 as I say I believe needs to be done concurrently, is</p> <p>17 done. That's a wholly different circumstance than the</p> <p>18 circumstance in which basically a licensee is</p> <p>19 intending to withdraw itself from NRC jurisdiction.</p> <p>20 Q. Well, isn't it a fact that before one thing</p> <p>21 can be done at this plant by Nuclear Development, they</p>
<p style="text-align: right;">Page 246</p> <p>1 what Nuclear Development's position is.</p> <p>2 I'm asking you about the Zimmer case. The</p> <p>3 Zimmer case focused on the operation or operability of</p> <p>4 the plant in determining whether it was a utilization</p> <p>5 facility, did it not?</p> <p>6 A. It focused on the question of operability</p> <p>7 for purposes of terminating NRC jurisdiction and</p> <p>8 terminating the permit that subjected the Cincinnati</p> <p>9 Gas and Electric Company to NRC jurisdiction.</p> <p>10 Q. And this memorandum opinion states on the</p> <p>11 first page, the applicant's representation that all</p> <p>12 fuel would be removed in number one. And number two,</p> <p>13 that the nuclear steam supply system would be modified</p> <p>14 to prevent its operation as a utilization facility,</p> <p>15 and that there was -- there would be severing and</p> <p>16 welding caps on the two main feed water lines and four</p> <p>17 main steam lines and removing the control rod drive</p> <p>18 mechanism.</p> <p>19 Do you see that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. All right, sir. And the NRC accepted that</p>	<p style="text-align: right;">Page 248</p> <p>1 first have to obtain a construction permit from NRC</p> <p>2 and then ultimately an operating license from NRC,</p> <p>3 correct?</p> <p>4 MR. LEMBKE: Object to the vagueness of "one</p> <p>5 thing."</p> <p>6 THE WITNESS: Well, certainly --</p> <p>7 BY MR. O'REAR:</p> <p>8 Q. Isn't it a fact that they cannot conduct any</p> <p>9 license activities on this site, even if they were to</p> <p>10 own and possess it, until a construction permit is</p> <p>11 issued by the NRC? And then they cannot operate until</p> <p>12 a second license, an operating license is issued by</p> <p>13 the NRC. Isn't that correct?</p> <p>14 A. Nuclear Development can do nothing with</p> <p>15 respect to the Bellefonte plant without prior NRC</p> <p>16 authorization, and ultimately it would have to seek an</p> <p>17 operating license.</p> <p>18 And as my opinion indicated, I believe under</p> <p>19 the circumstances here, the timing of that is</p> <p>20 basically concurrent, the transfer of the title to the</p> <p>21 land is concurrent with without authorization to</p>

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1 transfer the construction permit.

2 Q. Did you participate in the Zimmer opinion?

3 A. No, the because at that time I would not

4 have -- I participated in a number of matters,

5 probably the reason, one of those circumstances that

6 led to the abandonment of the project, which is again,

7 quality assurance problems.

8 But I was not counsel on this -- related to

9 this.

10 Q. Were you involved in the work on the

11 proposed rule for decommissioning plants by the NRC?

12 A. Only in the sense that as a commissioner I

13 voted to instruct the staff to move toward development

14 of such a rule.

15 Q. And you were in favor of that rule, weren't

16 you?

17 A. I was in favor of the Agency creating a

18 decommissioning rule, because I thought it would be a

19 more efficient way of addressing the decommissioning

20 process because the Agency had been issuing extensions

21 which from a public relations standpoint, aren't

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1 always the best thing.

2 And also I think it provided -- more

3 importantly it provided greater stability to licensees

4 who were entering the decommissioning process.

5 Q. And the Zimmer case is cited favorably as in

6 the proposed rule and its rationale's is adopted in

7 the proposed rule. Is that correct?

8 A. I frankly don't recall. I haven't looked at

9 the proposed rule -- I probably haven't looked at the

10 proposed rule since I voted on it before leaving the

11 Commission.

12 Q. All right. We'll look at it in just a

13 minute. I just wondered if you recalled that. Let's

14 move on to Exhibit 130, if we could.

15 A. Can you tell me the title of it?

16 Q. Yes. Exhibit 130 is a letter dated at the

17 top September 14, 2006 from Ms. Haney with the NRC to

18 Mr. Singer.

19 A. I got it.

20 Burns Exhibit No. 130 was marked for

21 identification.)

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1 BY MR. O'REAR:

2 Q. Now, you were personally involved in this, I

3 believe you said earlier in the deposition, correct?

4 A. I would have some awareness of it and some

5 of the staff from the General Counsel's Office who

6 advised or were under my supervisor.

7 I don't recall how -- I don't recall

8 specifically that, you know, I wrote on the -- or

9 commented specifically. I was probably briefed on it

10 by my staff.

11 Q. Well, can you identify this letter as the

12 letter from the NRC which terminated the construction

13 permit at Bellefonte on September 14, 2006?

14 A. Hold on. Hold on. Sorry. Yes, it looks

15 like an acknowledgement of the withdrawal of the

16 permit.

17 Q. And it was effective September 14, 2006, the

18 date of the letter, correct?

19 A. Yeah. It doesn't say a particular effective

20 date. But I would agree that the date of the letter

21 can be construed as the effective date.

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1 Q. And then if you would look at the next

2 exhibit, which should be 131, which is a one-page

3 document dated at the top February 18, 2009.

4 Burns Exhibit No 131 was marked for

5 identification.)

6 THE WITNESS: Yeah, I have that.

7 BY MR. O'REAR:

8 Q. It's a memo from Mr. Bate?

9 A. Right.

10 MR. LEMBKE: I got lost. What document are

11 we looking at?

12 MR. O'REAR: 131.

13 MR. LEMBKE: Thank you.

14 BY MR. O'REAR:

15 Q. Tell me when you get it.

16 A. I'm all set.

17 Q. Okay. Are you familiar with this document?

18 A. Yeah, I'm familiar will it.

19 Q. In your research -- you did research on the

20 history of these this permits, didn't you? And you

21 found in your research that they were terminated on

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<p style="text-align: right;">Page 253</p> <p>1 September 14, 2006, and then reinstated sometime in</p> <p>2 2009, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And then this Exhibit 131 may not be the</p> <p>5 actual reinstatement but it -- "The director of the</p> <p>6 NRR is authorized to issue an order reinstating the</p> <p>7 construction permit for Bellefonte Units One and two,</p> <p>8 placing the facility in terminated plant status." See</p> <p>9 that?</p> <p>10 A. I do.</p> <p>11 Q. Do you know the actual date that the</p> <p>12 construction permits were reinstated in terminated</p> <p>13 plant status?</p> <p>14 A. I believe actually, it's referenced in my</p> <p>15 report -- the main report, the initial report. I</p> <p>16 think it's Document 39 under this inventory of</p> <p>17 documents which references a Federal Register notice</p> <p>18 dated March 13th, 2009. And that, you know, given the</p> <p>19 timing here, I believe that and we've referenced it,</p> <p>20 that's the date when the director's order was issued.</p> <p>21 Q. Okay. Your audio is moving in and out on</p>	<p style="text-align: right;">Page 255</p> <p>1 BY MR. O'REAR:</p> <p>2 Q. Okay. Mr. Burns, we've looked at two</p> <p>3 documents; Exhibit 130 and 131, which indicate that</p> <p>4 from the period of September 2006 through March of</p> <p>5 2009 there was no construction permit in existence at</p> <p>6 the Bellefonte site, is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And there was no operating license from the</p> <p>9 NRC to TVA during that period either, was there?</p> <p>10 A. No, there was no operating license.</p> <p>11 Q. And there never has been an operating</p> <p>12 license issued on this plant, has there?</p> <p>13 A. No.</p> <p>14 Q. Okay. All right. We had a double negative</p> <p>15 there.</p> <p>16 Has there ever been an operating license</p> <p>17 issued on this plant?</p> <p>18 A. No operating license has been issued for</p> <p>19 this plant.</p> <p>20 Q. So for two and a half years TVA owned this</p> <p>21 grant -- the plant site, the real estate where there</p>
<p style="text-align: right;">Page 254</p> <p>1 me. I don't know what the issue is.</p> <p>2 A. Okay. I'm sorry.</p> <p>3 Again, I'll reference it in Document Number</p> <p>4 39 of my original report, which is a reference to a</p> <p>5 Federal Register notice published on March 13th, 2009.</p> <p>6 So it was probably back two days before that</p> <p>7 because there's always a issuance of the Federal</p> <p>8 Register notice -- order was published in the Federal</p> <p>9 Register and then -- so active publish. So it was</p> <p>10 early March.</p> <p>11 (The reporter requested clarification.)</p> <p>12 BY MR. O'REAR:</p> <p>13 Q. Yes, it's hard for me to hear, too, Mr.</p> <p>14 Burns. It's just your -- the audio is drifting in and</p> <p>15 out.</p> <p>16 MR. LEMBKE: You may want to sit back a</p> <p>17 little. You might be too close.</p> <p>18 MR. O'REAR: Let's go off the record for a</p> <p>19 second.</p> <p>20 (Whereupon, a recess ensued.)</p> <p>21 MR. O'REAR: Back on the record.</p>	<p style="text-align: right;">Page 256</p> <p>1 was a partially completed facility there, not fully</p> <p>2 constructed and TVA had no construction permit and had</p> <p>3 no operating license for two and a half years. Is</p> <p>4 that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And so NRC took the position at the time</p> <p>7 that with respect to Bellefonte and the condition it</p> <p>8 was in at that time, no license was needed in order to</p> <p>9 -- for TVA to own the site, correct?</p> <p>10 A. Correct. Because the NRC had determined</p> <p>11 that it could terminate its jurisdiction over the site</p> <p>12 with TVA basically giving up the permit.</p> <p>13 Q. Is it your opinion that the Bellefonte site</p> <p>14 was a utilization facility during that two and a half</p> <p>15 year period?</p> <p>16 A. It was not -- it was not a utilization</p> <p>17 facility subject to NRC jurisdiction.</p> <p>18 This is really the situation as in Zimmer,</p> <p>19 where the license holder decides to turn in the</p> <p>20 license and go away, and the NRC has looked at it from</p> <p>21 the steps at that point that it was satisfied it could</p>

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<p style="text-align: right;">Page 257</p> <p>1 do that.</p> <p>2 Q. All right. I want you to look at the next</p> <p>3 exhibit, and it is a letter from TVA to the NRC dated</p> <p>4 April the 6th, 2006.</p> <p>5 MR. LEMBKE: What's that exhibit number?</p> <p>6 MR. O'REAR: It's a blank. I need to fill</p> <p>7 it in. It'll be 206, 206.</p> <p>8 (Burns Exhibit No. 206 was marked for.)</p> <p>9 MR. LEMBKE: And what's the date of the</p> <p>10 letter?</p> <p>11 MR. O'REAR: April 6, 2006.</p> <p>12 MR. LEMBKE: Okay.</p> <p>13 BY MR. O'REAR:</p> <p>14 Q. You have it there, Mr. Burns?</p> <p>15 A. I have it. Sorry.</p> <p>16 Q. Okay. Thank you.</p> <p>17 Now, this letter's not on your Exhibit A, is</p> <p>18 it?</p> <p>19 A. No.</p> <p>20 Q. Was this letter considered by you in forming</p> <p>21 your opinions and preparing your report?</p>	<p style="text-align: right;">Page 259</p> <p>1 Q. First page of this letter says at the very</p> <p>2 beginning, "This letter requests NRC approval to</p> <p>3 withdraw of BLN." That's Bellefonte, right?</p> <p>4 A. I believe it is.</p> <p>5 Q. "Permit in accordance with generic letter</p> <p>6 87-15 Policy Statement on deferred plant." So you see</p> <p>7 that?</p> <p>8 A. Yes, I do.</p> <p>9 Q. And do you see in the second paragraph where</p> <p>10 there is the representation in the second sentence,</p> <p>11 "There is no nuclear fuel located at the site and TVA</p> <p>12 has removed safeguards information."</p> <p>13 A. Yes, I see that. Yes, I do.</p> <p>14 Q. And what is safeguards information?</p> <p>15 A. It's a level of security information that</p> <p>16 was created specifically with respect to -- it's</p> <p>17 basically used by both the NRC and the Department of</p> <p>18 Energy. It's below what we would call classified</p> <p>19 information, but it's security related information is</p> <p>20 the simple answer.</p> <p>21 Q. And then in the third paragraph, do you see</p>
<p style="text-align: right;">Page 258</p> <p>1 A. I may have read it but in the context of the</p> <p>2 NRC's orders and Mrs. Haney's letter notification --</p> <p>3 maybe I'm confusing the Haney letter, again.</p> <p>4 Q. Haney -- I'm sorry. You're referring to</p> <p>5 Catherine Haney?</p> <p>6 A. Yes, Cathy Haney, it's exhibit --</p> <p>7 Q. I just want to make sure the record's clear</p> <p>8 we're not referring to Franklin Haney or Frank Haney,</p> <p>9 our client.</p> <p>10 A. Oh, no.</p> <p>11 Q. Okay.</p> <p>12 A. It's Exhibit 130.</p> <p>13 Q. All right.</p> <p>14 A. Cathy Haney or Catherine Haney.</p> <p>15 Q. All right. Well, let's look at this letter.</p> <p>16 You may have considered but don't recall.</p> <p>17 Is that a fair statement?</p> <p>18 A. Yeah, I think that's a fair statement. I</p> <p>19 may have read it, but I looked at particularly the</p> <p>20 NRC's orders, some of the orders or the Haney letter</p> <p>21 with respect to termination probably more.</p>	<p style="text-align: right;">Page 260</p> <p>1 the reference to, "No quality related activities are</p> <p>2 ongoing at the site?"</p> <p>3 A. I'm sorry. Which paragraph?</p> <p>4 Q. Third paragraph, second line in the middle</p> <p>5 of the sentence it says --</p> <p>6 A. Yes, I do see that.</p> <p>7 Q. "And no quality related activities are</p> <p>8 ongoing at the site?"</p> <p>9 A. Correct.</p> <p>10 Q. And so does that refer to activities that</p> <p>11 are regulated and licensed by the NRC?</p> <p>12 A. Yes, that would refer to, I think it refers</p> <p>13 to the quality -- implementation, quality assurance</p> <p>14 and other programs that are necessary.</p> <p>15 Q. Okay. And when this letter was written on</p> <p>16 April the 6th, 2006, the construction permit was still</p> <p>17 in effect, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. Now, look at the letter from TVA to</p> <p>20 the NRC dated June 29, 2006. It's not got an exhibit</p> <p>21 number on it yet.</p>

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1 A. Okay. I have that.

2 MR. O'REAR: Let's mark that as Exhibit 207.

3 (Burns Exhibit No. 207 was marked for

4 identification.)

5 THE WITNESS: Okay.

6 BY MR. O'REAR:

7 Q. And just for the record, the prior letter of

8 April 6th, 2006 is Exhibit 206, in case it didn't get

9 marked that way.

10 Okay. This letter says in the second

11 paragraph, "During a conference call with the NRC

12 project manager on June 21, 2006, TVA was asked to

13 provide additional information regarding whether the

14 subject BLN unit can be considered a 'utilization

15 facility' as defined by 10 CFR 50.2 as follows." Do

16 you see that?

17 A. Yes, I do.

18 Q. And this letter is from TVA, correct?

19 A. That's what it says.

20 Q. And TVA is required by law and required by

21 NRC regulation to provide true and correct information

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1 to the NRC. Is that correct?

2 A. That's correct.

3 Q. And the definition is this, utilization

4 facility means, "Any nuclear reactor other than one

5 designed or used primarily for the formation of

6 plutonium or U233." Do you see that?

7 A. Correct.

8 Q. That's the NRC definition of utilization

9 facility, right?

10 A. That's correct.

11 Q. And that's the definition you've used in

12 your report, right?

13 A. That's correct.

14 Q. Okay. Look at the next paragraph. I'm

15 going to read it. Make sure I read it correctly. "In

16 their present condition, neither of the subject units

17 can be considered a utilization facility as so

18 defined. At the time that the construction of the

19 units was deferred, TVA considered Unit One to be

20 88 percent complete and Unit Two to be 58 percent

21 completed. At this time neither reactor has the

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1 necessary structures, systems or components in place

2 to sustain a controlled nuclear reaction. For

3 example, over the past several years, heat components

4 such as the control rod drive mechanisms for both Unit

5 One and two have been removed from the site which

6 precludes the ability of the units to operate as

7 nuclear reactors. In addition as stated in TVA's

8 letter of April 6, 2006, there is no nuclear fuel

9 located at the BLN site."

10 Did I read that correctly?

11 A. Yes, that's what I read too.

12 Q. Got you. And when this letter was written

13 on June 29, 2006, the construction permits were still

14 in effect, correct?

15 A. Yes, they were.

16 Q. Now, why didn't you cite this letter in your

17 report?

18 A. I don't have a particular answer. I think

19 again, this situation speaks to the Zimmer situation

20 which is basically a licensee seeking to terminate its

21 -- the regulatory control exercised by the NRC over

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1 the construction permit and facilities that may be --

2 that have or may be under construction at the site.

3 And that's what I think this speaks to.

4 Again, what ways is TVA assuring the NRC

5 that by giving up the construction permit, it's done

6 what it needs to do to assure that basically the

7 facilities at that time can be possessed without that

8 continuing NRC oversight, because they are not capable

9 of being put into operation. That's what I think it's

10 for.

11 Q. TVA said -- using the definition that you've

12 used for utilization facility, that this plant is not

13 a utilization facility, correct?

14 A. It's saying yes. It can be considered upon

15 termination, not to be -- in support of termination

16 that it's not a utilization facility.

17 Q. It doesn't say that. Let's --

18 A. Well, I'm telling you how I read that

19 letter. Because, again, on these things you have to

20 look at the context in which it's presented. It's

21 context like the Zimmer context. This is not where

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<p style="text-align: right;">Page 265</p> <p>1 you have an active construction permit that somebody</p> <p>2 wants and that basically is headed toward the</p> <p>3 potential operation.</p> <p>4 Q. Okay. Let's looking at this sentence. It</p> <p>5 says, "In their present condition, neither of the</p> <p>6 subject units can be considered a utilization facility</p> <p>7 as so defined." Do you see that?</p> <p>8 A. Correct, I see that.</p> <p>9 Q. Are you stating that TVA made a false</p> <p>10 statement there?</p> <p>11 A. No. TVA did not make a false statement.</p> <p>12 What it's doing is, again, in the context of trying to</p> <p>13 withdraw from NRC's oversight and control of the</p> <p>14 Bellefonte units, it's basically saying this is not</p> <p>15 the thing you're going to be concerned about that can</p> <p>16 be turned into operations at that time. And that's</p> <p>17 what they were doing, context is everything.</p> <p>18 Q. The letter said in present condition, dated</p> <p>19 June 29, 2006. On that day neither of those units</p> <p>20 were utilization facilities, it had none of the</p> <p>21 additional language you added in your answer.</p>	<p style="text-align: right;">Page 267</p> <p>1 utilization facility on June 29, 2006?</p> <p>2 MR. LEMBKE: Well, I object, that misstates</p> <p>3 his testimony.</p> <p>4 BY MR. O'REAR:</p> <p>5 Q. Was the plant in your opinion a utilization</p> <p>6 facility on June the 29th, 2006?</p> <p>7 A. It was not a facility capable of being put</p> <p>8 into operation which is the operative and significant</p> <p>9 factor with respect to the circumstances in context</p> <p>10 addressed here.</p> <p>11 Q. You have opined that the plant is a</p> <p>12 utilization facility, have you not?</p> <p>13 A. Correct.</p> <p>14 Q. June 29, 2006, in your opinion, was the</p> <p>15 Bellefonte plant a utilization facility? Can you</p> <p>16 answer that yes or no?</p> <p>17 A. I think I've answered that.</p> <p>18 Q. I don't think you have. Can you answer yes</p> <p>19 or no, whether on June 29, 2006 the Bellefonte plant</p> <p>20 was a utilization facility?</p> <p>21 MR. LEMBKE: I object to the form of that</p>
<p style="text-align: right;">Page 266</p> <p>1 A. I didn't --</p> <p>2 MR. LEMBKE: Hold it. Hold it, Mr. Burns.</p> <p>3 There's no question there. That's a statement and I</p> <p>4 move to strike it. It's argumentative.</p> <p>5 BY MR. O'REAR:</p> <p>6 Q. Doesn't the letter say in the present</p> <p>7 condition, which would be June 29, 2006, "Neither of</p> <p>8 the subject units can be considered a utilization</p> <p>9 facility as so defined."</p> <p>10 MR. LEMBKE: Asked and answered, objection.</p> <p>11 You can answer it again.</p> <p>12 THE WITNESS: I don't disagree with what the</p> <p>13 letter says. Again, I believe you have to understand</p> <p>14 the context in which that is presented. And the</p> <p>15 context there is different than the context addressed</p> <p>16 in my report, with respect to transfer of the site</p> <p>17 prior to transfer of construction permit.</p> <p>18 Because this is about killing the plant and</p> <p>19 that's what we're talking about here.</p> <p>20 BY MR. O'REAR:</p> <p>21 Q. And so you agree that the plant was not a</p>	<p style="text-align: right;">Page 268</p> <p>1 question. That's not a question. He's explained</p> <p>2 already why that can't be answered yes or no.</p> <p>3 He said it depends on the context.</p> <p>4 So, Mr. Burns, you do not have to answer</p> <p>5 that question yes or no. And it's asked and answered.</p> <p>6 BY MR. O'REAR:</p> <p>7 Q. Waiting on an answer, Mr. Burns.</p> <p>8 A. My answer is as of that date, I would not</p> <p>9 consider -- that is TVA's representation that it is</p> <p>10 not capable of being put into operation.</p> <p>11 But I would say the point it does not any</p> <p>12 longer being considered a utilization facility, would</p> <p>13 be the date of Ms. Haney's letter on September 14,</p> <p>14 2006, when she approves TVA's construction permit.</p> <p>15 Q. Okay. And can you answer yes or no whether</p> <p>16 the Bellefonte plant was a utilization facility when</p> <p>17 this letter was issued on June 29, 2006?</p> <p>18 MR. LEMBKE: I object to the form of the</p> <p>19 question, it's argumentative. He's answered -- he</p> <p>20 just answered that question and he explained why</p> <p>21 that's not a yes or a no. And, so, this is</p>

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<p style="text-align: right;">Page 269</p> <p>1 harassment, he asking him the same question. He's not</p> <p>2 giving you the answer you want.</p> <p>3 BY MR. O'REAR:</p> <p>4 Q. Can you answer yes or no to that question?</p> <p>5 A. I'm not even sure of what the question is.</p> <p>6 Was it still -- would I still consider it or</p> <p>7 was it still considered?</p> <p>8 Q. No, sir. I know I've asked it four or five</p> <p>9 times because I'm trying to get an answer.</p> <p>10 A. Yes, and I answered several times.</p> <p>11 Q. Can you answer yes or no whether on June</p> <p>12 29th, 2006 the Bellefonte plant was a utilization</p> <p>13 facility?</p> <p>14 A. My prior answer was yes, it was because</p> <p>15 until the NRC released its jurisdiction on</p> <p>16 September 14th, 2006, I would consider it such.</p> <p>17 Q. And did you not want to be examined on this</p> <p>18 letter? Is that why it's not listed in your report?</p> <p>19 A. No, I actually -- I may have read this</p> <p>20 letter. But what I thought was important was the</p> <p>21 letter from Ms. Haney with respect to the termination.</p>	<p style="text-align: right;">Page 271</p> <p>1 whether or not this plant is a utilization facility?</p> <p>2 THE WITNESS: As I say I may have looked at</p> <p>3 the letter. I don't think it's dispositive of the</p> <p>4 question because of the significant difference in the</p> <p>5 circumstances.</p> <p>6 BY MR. O'REAR:</p> <p>7 Q. Okay. Do you think TVA's position and</p> <p>8 statements regarding whether or not the plant is a</p> <p>9 utilization facility are important factors in forming</p> <p>10 your opinion?</p> <p>11 MR. LEMBKE: Objection, vague.</p> <p>12 THE WITNESS: I'm not sure I understand the</p> <p>13 question.</p> <p>14 BY MR. O'REAR:</p> <p>15 Q. Well, you've opined it is a utilization</p> <p>16 facility, correct?</p> <p>17 A. Correct.</p> <p>18 Q. In forming that opinion, was it important to</p> <p>19 you to determine what TVA had said about that issue?</p> <p>20 A. Well, I think it was important for my</p> <p>21 standpoint for some of the background on the</p>
<p style="text-align: right;">Page 270</p> <p>1 This is not some sort of avoidance.</p> <p>2 Because, again, the context here is not the context of</p> <p>3 Nuclear Development. This is the Zimmer context.</p> <p>4 We want to walk away, not that we want to</p> <p>5 pass it off and have somebody else do it or take over</p> <p>6 the permits and what's the time of that.</p> <p>7 That's -- from my standpoint, that doesn't</p> <p>8 bear on this.</p> <p>9 Q. So you didn't think this letter was</p> <p>10 significant on the question of whether or not the</p> <p>11 Bellefonte plant was a utilization facility?</p> <p>12 MR. LEMBKE: I object to the form of the</p> <p>13 question. It's argumentative and it's vague as to</p> <p>14 significance because you're questioning him about his</p> <p>15 list of exhibits, not -- not what was significant.</p> <p>16 MR. O'REAR: I'm asking him why it's not on</p> <p>17 his list.</p> <p>18 MR. LEMBKE: And he answered it.</p> <p>19 MR. O'REAR: Well, I'm asking him now, did</p> <p>20 you not consider this letter to be significant in the</p> <p>21 context of forming your opinion with respect to</p>	<p style="text-align: right;">Page 272</p> <p>1 Bellefonte plant.</p> <p>2 Yes, from that standpoint I would say yes.</p> <p>3 Q. But you dismissed TVA's position by stating</p> <p>4 that it is not a utilization facility until at some</p> <p>5 point in the future when the construction permits are</p> <p>6 withdrawn. Is that correct?</p> <p>7 A. No, that's not correct. I'm not dismissing</p> <p>8 their position. I'm saying their position was taken</p> <p>9 in a context that is different than this one.</p> <p>10 Q. Okay. Let's look at the next exhibit.</p> <p>11 MR. LEMBKE: Which is what number?</p> <p>12 MR. O'REAR: It will be Number 208. The</p> <p>13 exhibit is a letter dated August 22nd, 2006 from the</p> <p>14 NRC to Mr. Singer at TVA.</p> <p>15 (Burns Exhibit No. 208 was marked for</p> <p>16 identification.)</p> <p>17 BY MR. O'REAR:</p> <p>18 Q. Do you have that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. And I mean, is this letter listed in your</p> <p>21 report?</p>

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<p style="text-align: right;">Page 273</p> <p>1 A. I don't recall. It may not be.</p> <p>2 Q. Let's look at it. Let's confirm whether it</p> <p>3 is in your report or not in your report first.</p> <p>4 A. I do not see a specific reference.</p> <p>5 Q. So are you saying it's not listed in your</p> <p>6 report. Is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. Can you identify this as a letter</p> <p>9 dated August 22nd, 2006 from the NRC to TVA regarding</p> <p>10 the Bellefonte construction permit?</p> <p>11 A. Yes, it is.</p> <p>12 Q. Would you turn to the fifth page of the</p> <p>13 exhibit which is Page 3 of the environmental</p> <p>14 assessment.</p> <p>15 A. It's labeled Page 3.</p> <p>16 Q. Okay. It's labeled Page 3.</p> <p>17 I mean, well, let's back be up on that.</p> <p>18 The letter itself says, "Enclosed is a copy</p> <p>19 of the environmental assessment and finding of no</p> <p>20 significant impact related to your request for</p> <p>21 withdrawal of the construction permit." Is that</p>	<p style="text-align: right;">Page 275</p> <p>1 Q. So you didn't consider this letter when you</p> <p>2 prepared your report?</p> <p>3 A. I don't think I looked at this letter</p> <p>4 specifically.</p> <p>5 Q. Did you look at the environmental assessment</p> <p>6 when you prepared the report?</p> <p>7 A. I'm not sure that I looked at the</p> <p>8 environmental assessment. I saw that it was</p> <p>9 referenced in Cathy Haney's letter.</p> <p>10 Q. Okay. All right. Are you on Page 3 of the</p> <p>11 environmental assessment?</p> <p>12 A. Yes.</p> <p>13 Q. And you see the last paragraph. Let me read</p> <p>14 it. Make sure I read it correctly. "By letter dated</p> <p>15 June 29, 2006 the permittee stated that neither of the</p> <p>16 units can be considered a utilization facility as</p> <p>17 defined in 10 CFR 50.2. At the time the construction</p> <p>18 of the units was deferred, TVA considered Unit One to</p> <p>19 be 88 percent complete and Unit Two to be 58 percent</p> <p>20 complete. At this time neither reactor has the</p> <p>21 necessary structures, systems or components in place</p>
<p style="text-align: right;">Page 274</p> <p>1 correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And then the attachment is the environmental</p> <p>4 assessment and finding of no significant impact. Is</p> <p>5 that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And that's a finding by the NRC, correct?</p> <p>8 A. Correct.</p> <p>9 Q. All right. And would you consider this to</p> <p>10 be important precedent for you to consider in the</p> <p>11 context of whether or not the Bellefonte plant is a</p> <p>12 utilization facility?</p> <p>13 A. Well, this letter is part of the process of</p> <p>14 the NRC acting on the termination of the construction</p> <p>15 permit. So it's significant from that standpoint.</p> <p>16 Q. Is it significant from the standpoint of</p> <p>17 determining whether this plant is a utilization</p> <p>18 facility?</p> <p>19 A. I -- well, I haven't read it at this point</p> <p>20 and I don't know what it says about that, so I can't</p> <p>21 say.</p>	<p style="text-align: right;">Page 276</p> <p>1 to sustain a controlled nuclear reaction. Over the</p> <p>2 past several years, key components such as the control</p> <p>3 rod drive mechanisms from both Unit One and two have</p> <p>4 been removed from the site which precludes the ability</p> <p>5 of the units to operate as nuclear reactors. The</p> <p>6 current condition of the plant does not allow</p> <p>7 operation. Therefore neither plant can be considered</p> <p>8 a utilization facility."</p> <p>9 Did I read that correctly?</p> <p>10 A. Yes, that's what I read.</p> <p>11 Q. And the last sentence of that paragraph was</p> <p>12 a statement by the NRC staff. Is that correct?</p> <p>13 A. What's the last statement, the current</p> <p>14 condition?</p> <p>15 Q. Yes.</p> <p>16 A. Yes, well, this is an NRC document.</p> <p>17 Q. And it's an NRC conclusion about this plant.</p> <p>18 Is that correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And the conclusion is the current condition</p> <p>21 of the plant does not allow operation. Therefore</p>

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<p style="text-align: right;">Page 277</p> <p>1 neither plant can be considered a utilization 2 facility. 3 That's the NRC's conclusion, correct? 4 A. That's what it states. Again, in the 5 context that I described with respect to Cathy Haney's 6 letter and to other -- and with other documentation 7 here. We're looking at a process that's trying to 8 basically walk away from the plant and end NRC 9 jurisdiction. So those statements -- this is just 10 like statements we've been talking about for the last 11 hour. 12 Q. Well, it doesn't say the plant -- neither 13 plant can be considered a utilization facility 14 whenever we withdraw the construction permit, did it? 15 A. Well, it doesn't use that language but 16 that's the entire purpose. You've got to make -- 17 they're going to make that finding in order to say NRC 18 is satisfied that your restrictions can be terminated 19 over the facility. 20 Q. Well, let me ask you this. What the -- TVA 21 said and what the NRC agreed to was that in order to</p>	<p style="text-align: right;">Page 279</p> <p>1 BY MR. O'REAR: 2 Q. Well, in our situation nobody is going to 3 take it up and keep running with it unless they get 4 two permits; one a construction permit and then get an 5 operating license. Is that correct? 6 A. Well, it depends on how many in the 7 facility. Two construction permits and I presume two 8 operating licenses. But again, the construct is, is 9 this is a circumstance -- that's a circumstance in 10 which there is a continuing NRC interest in the site 11 as well as the appropriateness of transfer of the 12 permit. And that's what I have been speaking to. 13 This is a circumstance in which everyone's 14 walking away from the permit and from what's left of 15 the site. 16 Q. And the focus of -- both of TVA and the NRC 17 regarding whether or not this is was a construction -- 18 excuse me, a utilization facility was on whether it 19 could operate as a nuclear reactor. Wasn't that the 20 key inquiry here? 21 MR. LEMBKE: Well, I object. First of all,</p>
<p style="text-align: right;">Page 278</p> <p>1 get to that point, we are declaring to you right now 2 this plant site is not a utilization facility. 3 Isn't that what was said and agreed to -- 4 said by TVA, agreed to by the NRC? 5 MR. LEMBKE: I object to the form, it 6 misstates his testimony, lack of foundation. 7 THE WITNESS: Well, what I had said is that 8 what it reflects is a representation of this 9 circumstance in these various documents we've been 10 talking about, reflects the circumstance in which TVA 11 is willing or is acting to cede its construction 12 permit. 13 That's to make certain representations and 14 do certain things with respect to this site. To do 15 that, the NRC needs to be able to find that it would 16 be satisfied with that and satisfied that the plant is 17 no longer in the condition that it would need to 18 assert continued jurisdiction. And that's what 19 they're doing here. As I say, very similar to the 20 Zimmer situation. It is not a situation where 21 somebody wants to take it up and keep running with it.</p>	<p style="text-align: right;">Page 280</p> <p>1 that's a compound question. And second of all, 2 there's no foundation for his comment on what third 3 parties were thinking at the time. 4 MR. O'REAR: Well, I'm not asking him what 5 they were thinking, I'm asking him about what they 6 said. 7 MR. LEMBKE: Well, then I object to the 8 question because you misstate the evidence. You've 9 already been over this. 10 BY MR. O'REAR: 11 Q. So let's go back. 12 MR. LEMBKE: Now, you're trying to change 13 what the evidence says. 14 And we've been going about an hour. Is this 15 a good time for a short break? 16 MR. O'REAR: Let me finish this line, then 17 we can. 18 BY MR. O'REAR: 19 Q. If you would look at Exhibit 208, Page 3, 20 this paragraph that we've been referring to -- 21 A. I'm sorry?</p>

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<p style="text-align: right;">Page 281</p> <p>1 Q. 208, the last exhibit we've been talking</p> <p>2 about.</p> <p>3 A. The August 2006 letter. I forgot to mark</p> <p>4 it.</p> <p>5 Q. 208.</p> <p>6 A. Got it.</p> <p>7 Q. Okay. Looking at that same paragraph, it</p> <p>8 says in the next to last sentence, "Over the past</p> <p>9 several years key components such as the control rod</p> <p>10 drive mechanism for both Unit One and two have been</p> <p>11 removed from the site, which precludes the ability of</p> <p>12 the unites to operate as nuclear reactors."</p> <p>13 And so, what's -- the focus on there is</p> <p>14 whether it can operate as a nuclear reactor for</p> <p>15 determining whether it is a utilization facility,</p> <p>16 correct?</p> <p>17 A. That's what the sentence is focused on.</p> <p>18 Q. Okay. And there's no reference to what the</p> <p>19 original design plans were or what the plant was</p> <p>20 designed for, is there?</p> <p>21 A. Well, there's no specific reference to, you</p>	<p style="text-align: right;">Page 283</p> <p>1 MR. LEMBKE: Objection, asked and answered.</p> <p>2 THE WITNESS: Again, what -- I would say no,</p> <p>3 there's not a reference to specific design but that's</p> <p>4 not the focus of what the NRC is looking at here. Its</p> <p>5 focus is, is it satisfied from the standpoint of the</p> <p>6 progression -- not progression, but the status of the</p> <p>7 facility such that it would not be something that you</p> <p>8 just turn a screw and the thing can be turned on.</p> <p>9 That's, again, the whole idea of we're being</p> <p>10 asked to cancel the permit and walk away as the</p> <p>11 nuclear regulator. Those are the things from that</p> <p>12 standpoint and that's why these things were satisfied,</p> <p>13 is because it can't be turned on, it's not something</p> <p>14 that the termination that's tied particularly to the</p> <p>15 design -- original design or changes that were made.</p> <p>16 Q. And then at some point after this letter of</p> <p>17 August 22nd, 2006, the NRC agreed to terminate the</p> <p>18 permit, correct?</p> <p>19 A. Yes, I believe that's in Cathy Haney's</p> <p>20 letter.</p> <p>21 Q. September 14, 2006, correct?</p>
<p style="text-align: right;">Page 282</p> <p>1 know, the earliest design documents. But I'm not sure</p> <p>2 I understand the relevance.</p> <p>3 Q. The relevance is that the design documents</p> <p>4 were still in effect but the determining factor is</p> <p>5 whether it could operate as a nuclear reactor, not</p> <p>6 whether it was designed as a nuclear reactor.</p> <p>7 MR. LEMBKE: That's not a question.</p> <p>8 MR. O'REAR: That was a question.</p> <p>9 BY MR. O'REAR:</p> <p>10 Q. Is that correct?</p> <p>11 MR. LEMBKE: I object. Object to the lack</p> <p>12 of foundation and asking him to testify to what third</p> <p>13 parties were thinking.</p> <p>14 MR. O'REAR: I don't think I asked that.</p> <p>15 BY MR. O'REAR:</p> <p>16 Q. You can answer the question.</p> <p>17 A. What is the question?</p> <p>18 Q. The question is: There is no reference in</p> <p>19 this document by the NRC to what the plant was</p> <p>20 designed for in stating whether or not the plant is a</p> <p>21 utilization facility, is there?</p>	<p style="text-align: right;">Page 284</p> <p>1 A. Yes. Again, it's the Cathy Haney letter. I</p> <p>2 sort of lost track of it. This is Exhibit 130.</p> <p>3 Okay. Let's take a five-minute break.</p> <p>4 (Whereupon, a recess ensued.)</p> <p>5 THE WITNESS: Back on the record.</p> <p>6 BY MR. O'REAR:</p> <p>7 Q. Mr. Burns, can you put Exhibit 83 before</p> <p>8 you? This is 10 CFR part 50, the Commission policy</p> <p>9 statement on deferred plants.</p> <p>10 MR. LEMBKE: What was the exhibit number?</p> <p>11 MR. O'REAR: Eighty-three.</p> <p>12 THE WITNESS: I saw it, now I may have --</p> <p>13 got it. Sorry.</p> <p>14 BY MR. O'REAR:</p> <p>15 Q. That's fine. You're familiar with that</p> <p>16 document, aren't you?</p> <p>17 A. Yes, I am.</p> <p>18 Q. And did you help construct that when it was</p> <p>19 originally adopted?</p> <p>20 A. I did not author it or did not -- its</p> <p>21 development. However, at the time it was adopted I</p>

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<p style="text-align: right;">Page 285</p> <p>1 was a legal advisor to Commission Carr and his legal</p> <p>2 advice -- this came before the Commission. It was</p> <p>3 endorsed and issued as a Commission policy statement,</p> <p>4 so I would have advised him on it.</p> <p>5 Q. And this is a rule of the Commission, right,</p> <p>6 a rule of the NRC?</p> <p>7 A. No, it's a policy statement.</p> <p>8 Q. Just a policy statement?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Not considered to be a " rule"?</p> <p>11 A. Not an enforceable rule, no.</p> <p>12 Q. Is it used by the NRC staff as guidelines?</p> <p>13 A. Yes. That was its intention.</p> <p>14 Q. And when you referred earlier to the</p> <p>15 wholistic set of authority that need to be considered</p> <p>16 here, would you have included this deferred plant</p> <p>17 policy statement within that group of things to be</p> <p>18 considered?</p> <p>19 A. I think the policy statement has relevance.</p> <p>20 It reflects the overall construct for construction</p> <p>21 permits and it was intended to address the</p>	<p style="text-align: right;">Page 287</p> <p>1 reporter, the exhibit as I have it and as it's</p> <p>2 supposed to be submitted at the deposition does not</p> <p>3 have blank pages.</p> <p>4 BY MR. O'REAR:</p> <p>5 Q. Okay. Page 3?</p> <p>6 A. Yes.</p> <p>7 Q. Page 3 contains definitions of deferred</p> <p>8 plant and terminated plant. Is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Do you see that at the bottom?</p> <p>11 A. Yes, I do.</p> <p>12 Q. All right. Sir, and it defines a deferred</p> <p>13 plant as, "A nuclear power plant in which the licensee</p> <p>14 has ceased construction or reduced activity to a</p> <p>15 maintenance level, maintains the construction permit</p> <p>16 in effect and does not announced termination of</p> <p>17 plant."</p> <p>18 That is correct -- did I read that</p> <p>19 correctly?</p> <p>20 A. Yes.</p> <p>21 Q. And a terminated plant is defined as a,</p>
<p style="text-align: right;">Page 286</p> <p>1 circumstances that arose in the mid 1980s when there</p> <p>2 were a number of plants that were under construction</p> <p>3 but it was uncertain as to whether they would proceed</p> <p>4 to completion and operation.</p> <p>5 Q. Let's look at Page 3 of the exhibit.</p> <p>6 MR. LEMBKE: Well, you mean numbered Page 3?</p> <p>7 Because there are a bunch of blank pages, right?</p> <p>8 MR. O'REAR: I don't have any blank pages.</p> <p>9 I'm sorry.</p> <p>10 THE WITNESS: I have one Page Number 3 here.</p> <p>11 MR. O'REAR: Yeah. I do mean numbered Page</p> <p>12 3 but I don't have no blank pages on my exhibits.</p> <p>13 Maybe it was a copying error.</p> <p>14 MR. LEMBKE: Every other page of ours is</p> <p>15 blank.</p> <p>16 MR. O'REAR: Is Page 3 in there?</p> <p>17 THE WITNESS: Yeah.</p> <p>18 BY MR. O'REAR:</p> <p>19 Q. Let's look -- well, the blank pages are not</p> <p>20 part of the exhibit or should not be.</p> <p>21 MR. O'REAR: I just note for the court</p>	<p style="text-align: right;">Page 288</p> <p>1 "Nuclear plant at which the licensee has announced the</p> <p>2 construction has been permanently stopped, but which</p> <p>3 still has a valid construction permit." See that?</p> <p>4 Did I read that correctly?</p> <p>5 A. Correct.</p> <p>6 Q. So, both deferred plants and terminated</p> <p>7 plants exist while construction permits are valid and</p> <p>8 remain in effect. Is that correct?</p> <p>9 A. Yeah. What the policy does is it provides a</p> <p>10 dichotomy that reflects those for which a final</p> <p>11 decision are really just a deferral of a continuation</p> <p>12 of project might occur, and those in which basically</p> <p>13 the license holder is saying, we're over it and we're</p> <p>14 going to turn it in or we may put it -- or we may even</p> <p>15 try to transfer it. That can also happened with a</p> <p>16 deferred plant as well.</p> <p>17 Q. What I was trying to get you to clarify is</p> <p>18 that in both instances the construction permits remain</p> <p>19 in effect?</p> <p>20 A. Yes, valid construction permits, I agree.</p> <p>21 Q. And in your report in Paragraph 47 --</p>

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<p style="text-align: right;">Page 289</p> <p>1 A. Okay.</p> <p>2 Q. -- you cite to the policy statement on</p> <p>3 deferred plants, do you not?</p> <p>4 A. In 47? Yes, I do.</p> <p>5 Q. Yes. Forty-seven and 48?</p> <p>6 A. Yes, I do.</p> <p>7 Q. And that's this Exhibit 83, right?</p> <p>8 A. Yes. I was using an actual image from the</p> <p>9 Federal Register but that's what this is, too.</p> <p>10 Q. If you would turn to numbered Page 6 of the</p> <p>11 statement --</p> <p>12 A. Hold on. Okay. I think I've got it.</p> <p>13 The copy is not -- the page numbers on the</p> <p>14 copy are not correct.</p> <p>15 Q. I apologize.</p> <p>16 A. Is Section B: Terminated Plants?</p> <p>17 Q. That's correct?</p> <p>18 A. I'm on that page.</p> <p>19 Q. In your opinion, did the Bellefonte plant at</p> <p>20 any point meet the definition of a terminated plant?</p> <p>21 A. It could be considered so, although I don't</p>	<p style="text-align: right;">Page 291</p> <p>1 plants, too?</p> <p>2 MR. O'REAR: I'm asking him if the policy</p> <p>3 behind the statement regarding transfer of ownership</p> <p>4 of terminated plants in his opinion equally applies to</p> <p>5 deferred plants.</p> <p>6 THE WITNESS: Essentially when you analyze</p> <p>7 the provision, essentially there is an equivalency</p> <p>8 particularly with respect to provision B2(b), that</p> <p>9 lowercase B. Provision B2(a) really goes to basically</p> <p>10 the salvaging of components that, for example, a</p> <p>11 company that may want to sell them and this has</p> <p>12 happened obviously and we've talked about some</p> <p>13 circumstances earlier in -- about a qualifying</p> <p>14 experience. But it's similar where a license holder</p> <p>15 has a steam generator or it has a turbine or something</p> <p>16 like that, and it may want to sell that and basically</p> <p>17 recoup some losses -- some of its losses by selling</p> <p>18 equipment. And so what that provision does is it</p> <p>19 says, you need to make sure you maintain your quality</p> <p>20 documentation in short form.</p> <p>21 The second one is really very much like the</p>
<p style="text-align: right;">Page 290</p> <p>1 consider that significant.</p> <p>2 Q. Okay. And you don't consider it significant</p> <p>3 because you believe the policy behind this statement</p> <p>4 equally applies to deferred plants and terminated</p> <p>5 plants?</p> <p>6 A. Essentially, yes.</p> <p>7 Q. So when the policy statement refers to in</p> <p>8 Section B a terminated plant and in Paragraph 2 of</p> <p>9 Section B, measures that should be considered for</p> <p>10 reactivation or transfer of ownership of terminated</p> <p>11 plants, do you think those policy statements equally</p> <p>12 apply to deferred plants?</p> <p>13 A. I'm sorry. Which in --</p> <p>14 Q. B2, measures that should be considered for</p> <p>15 reactivation or transfer of ownership of the</p> <p>16 terminated plant?</p> <p>17 MR. LEMBKE: Well, I'm going to object to</p> <p>18 the form. It misstates the evidence.</p> <p>19 MR. O'REAR: I don't think.</p> <p>20 MR. LEMBKE: I mean, it says it's for</p> <p>21 terminated plants and you're asking is it for deferred</p>	<p style="text-align: right;">Page 292</p> <p>1 deferred plant aspect here, and that is if you're --</p> <p>2 if you decided to terminate your commitment to that</p> <p>3 and you wish to transfer, there still needs to be --</p> <p>4 basically you're still advised to maintain the</p> <p>5 preservation and maintenance and documentation program</p> <p>6 on it.</p> <p>7 And so that's what I'm saying. This</p> <p>8 provides -- there are two different ways things are</p> <p>9 going. One is you're going to -- you're going to have</p> <p>10 a lot of people scavenge your existing equipment. And</p> <p>11 the other one being you want to maintain it, so you</p> <p>12 don't raise the issues about the ability to transfer</p> <p>13 -- as a quality or raise questions about the quality</p> <p>14 of what you're transferring.</p> <p>15 BY MR. O'REAR:</p> <p>16 Q. This policy statement under measures that</p> <p>17 should be considered for reactivation or transfer of</p> <p>18 ownership does not say, make sure you get a transfer</p> <p>19 of the construction permit before you transfer the</p> <p>20 plant, does it?</p> <p>21 A. Say that again, please.</p>

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<p style="text-align: right;">Page 293</p> <p>1 Q. This policy statement about measures to be</p> <p>2 considered regarding the transfer of ownership does</p> <p>3 not say, make sure you get the construction permit --</p> <p>4 in effect construction permit transferred before you</p> <p>5 transfer the plant?</p> <p>6 A. It's not --</p> <p>7 MR. LEMBKE: Objection.</p> <p>8 THE WITNESS: It's not that detailed about a</p> <p>9 specific checklist or steps. It does highlight that</p> <p>10 you need to have in the authorization of the -- you</p> <p>11 need the transfer authorization. Again, that's in the</p> <p>12 context.</p> <p>13 The NRC has control of the construction</p> <p>14 permits in particular and you need to act in</p> <p>15 conformance with them and follow through with the</p> <p>16 process.</p> <p>17 BY MR. O'REAR:</p> <p>18 Q. Let's move to the next exhibit, which is</p> <p>19 Exhibit 129, previously marked. It is the proposal on</p> <p>20 decommissioning, which is a big thick document.</p> <p>21 A. Yes. Got it.</p>	<p style="text-align: right;">Page 295</p> <p>1 I'm not sure if the Commission has finished</p> <p>2 voting on it or intends to finish voting on it.</p> <p>3 Q. Does the proposed rule represent the</p> <p>4 proposal from the NRC staff, that this is a rule that</p> <p>5 the Commission needs to adopt?</p> <p>6 A. Yes. Almost all rulemakings need the</p> <p>7 Commission's approval before they're published for</p> <p>8 comment and their approval when they're adopted as the</p> <p>9 final rule. And this would be one of them because</p> <p>10 it's a significant substantive rule.</p> <p>11 Q. If you can look at Page -- Pages 172 through</p> <p>12 -- well, look at the 172 through -- well, look at 172</p> <p>13 through 173, I believe. There may be -- they may be</p> <p>14 copied front and back.</p> <p>15 A. Yes, it is. Okay.</p> <p>16 Q. In the proposed rule at the bottom of 172,</p> <p>17 it uses the Atomic Energy Act statutory definition of</p> <p>18 a utilization facility, does it not?</p> <p>19 A. Yes, it appears to.</p> <p>20 Q. And then on Page 173, it references the</p> <p>21 regulatory definition underneath the statutory</p>
<p style="text-align: right;">Page 294</p> <p>1 (Burns Exhibit No. 129 was marked for</p> <p>2 identification.)</p> <p>3 THE WITNESS: I've got it.</p> <p>4 BY MR. O'REAR:</p> <p>5 Q. Now, you referred to this in Paragraph 49 of</p> <p>6 your report, did you not?</p> <p>7 A. Yes.</p> <p>8 Q. And I think I asked you earlier, were you</p> <p>9 involved in the formulation of this proposed rule?</p> <p>10 A. You did ask me that.</p> <p>11 Q. Okay. And what is the current status of the</p> <p>12 rule?</p> <p>13 A. I don't -- don't know. As far as I know, it</p> <p>14 has not been -- again, the document we have here is a</p> <p>15 draft of a proposed rule that was sent to the</p> <p>16 Commission for approval. And given the stuck can I</p> <p>17 pay number sometime in between.</p> <p>18 I do not know the specific status of it</p> <p>19 other than to say as far as I'm aware, that it has not</p> <p>20 been issued for public comment in terms of a proposed</p> <p>21 rule in the Federal Register.</p>	<p style="text-align: right;">Page 296</p> <p>1 definition, correct?</p> <p>2 A. The reference is to 10 CFR 50.2?</p> <p>3 Q. Right.</p> <p>4 A. Yes, it references 50.2.</p> <p>5 Q. Do you know whether it would be adopted by</p> <p>6 the Commission or not? Do you have any prediction on</p> <p>7 that?</p> <p>8 A. I can't predict that. I can't predict that.</p> <p>9 I know I -- at the time I left the Commission in</p> <p>10 April 2019, it was pending before the Commission. But</p> <p>11 the majority of the Commission had not voted and since</p> <p>12 I haven't seen it in the Federal Register, I presume</p> <p>13 that has not as yet happened.</p> <p>14 I really -- this sort of goes on beyond what</p> <p>15 we're really talking about, but there are a number of</p> <p>16 reasons I can speculate why it might not happen.</p> <p>17 Q. You don't need to. Directing you back to</p> <p>18 173, the proposed rule cites the Zimmer case favorably</p> <p>19 as a practical approach regarding the decommissioned</p> <p>20 plant. Is that correct?</p> <p>21 A. That's correct.</p>

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<p style="text-align: right;">Page 297</p> <p>1 Q. Okay. So whether this rule is adopted or</p> <p>2 not, the Zimmer precedent will remain, will it not?</p> <p>3 A. Yes. And I don't question the Zimmer</p> <p>4 precedent.</p> <p>5 Q. Okay. Now, let's turn to your supplement to</p> <p>6 your report, which should be there somewhere.</p> <p>7 MR. O'REAR: We're going to mark -- this is</p> <p>8 marked Exhibit 201.</p> <p>9 (Burns Exhibit No. 201 was marked for</p> <p>10 identification.)</p> <p>11 THE WITNESS: Yes, I have it. It's 201?</p> <p>12 BY MR. O'REAR:</p> <p>13 Q. Yes.</p> <p>14 A. Okay.</p> <p>15 Q. I direct your attention to Page 3, Paragraph</p> <p>16 10.</p> <p>17 MR. LEMBKE: Give me just one second to pull</p> <p>18 it. Okay. And you want that marked 201?</p> <p>19 MR. O'REAR: Yes.</p> <p>20 MR. LEMBKE: All right.</p> <p>21 BY MR. O'REAR:</p>	<p style="text-align: right;">Page 299</p> <p>1 said in my original report, one of the reason it</p> <p>2 doesn't surprise me that there hasn't been a lot of</p> <p>3 reference back to it is the fact that most of this --</p> <p>4 these issues over construction were occurring in the</p> <p>5 late 1970s and early 1980s.</p> <p>6 Q. Well, not only has there not been a lot of</p> <p>7 reference, there hasn't been any reference to it, has</p> <p>8 there?</p> <p>9 A. I don't --</p> <p>10 MR. LEMBKE: Objection, asked and answered.</p> <p>11 BY MR. O'REAR:</p> <p>12 Q. Are you aware of any reference to it?</p> <p>13 A. I am personally --</p> <p>14 MR. LEMBKE: Same objection.</p> <p>15 MR. O'REAR: You're talking over the</p> <p>16 witness.</p> <p>17 MR. LEMBKE: I'm entitled to make my</p> <p>18 objection, Mr. O'Rear.</p> <p>19 MR. O'REAR: I understand, but you're both</p> <p>20 talking at the same time.</p> <p>21 BY MR. O'REAR:</p>
<p style="text-align: right;">Page 298</p> <p>1 Q. You allude to the Dr. Asperger letter in</p> <p>2 Paragraphs 10 and at the end of Paragraph 11. Is that</p> <p>3 correct?</p> <p>4 A. Right.</p> <p>5 Q. And at the end of Paragraph 11 you state</p> <p>6 there, "Nothing in the policy statement," referring to</p> <p>7 this deferred plant policy statement which we</p> <p>8 previously discussed, "indicates an alteration or</p> <p>9 abandonment of the NRC's view of the meaning of the</p> <p>10 term 'utilization facility' as expressed in Acting</p> <p>11 Director Case's letter."</p> <p>12 Do you see that?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Are you aware of that letter having ever</p> <p>15 been cited by the NRC as authority?</p> <p>16 Yes -- by the NRC as authority?</p> <p>17 A. I'm not aware of particular references in</p> <p>18 adjudication since the time that it was issued. I</p> <p>19 would note that the Case letter references Marble</p> <p>20 Hill, which I think is significant.</p> <p>21 And again, reflective of practice. And I</p>	<p style="text-align: right;">Page 300</p> <p>1 Q. Go ahead.</p> <p>2 A. I personally am not aware of a particular</p> <p>3 reference to it.</p> <p>4 Q. Okay. Mr. Burns, does it strike you unusual</p> <p>5 under the facts of our lawsuit that TVA was the</p> <p>6 construction permit holder and licensee, yet they were</p> <p>7 not the applicant to the NRC for the transfer of the</p> <p>8 construction permit. Is that unusual?</p> <p>9 MR. LEMBKE: Object to the form, as to lack</p> <p>10 of foundation and vagueness.</p> <p>11 THE WITNESS: The question is whether I see</p> <p>12 it as unusual that the TVA was not applicant?</p> <p>13 BY MR. O'REAR:</p> <p>14 Q. Yes.</p> <p>15 A. I'm not sure about that. I have read some</p> <p>16 of the staff guidance documents and where it indicates</p> <p>17 that the holder may join in.</p> <p>18 Q. Well, in your experience was the applicant</p> <p>19 for the transfer of the license typically the current</p> <p>20 holder of the license or the licensee and not the</p> <p>21 prospective licensee?</p>

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<p style="text-align: right;">Page 301</p> <p>1 MR. LEMBKE: Object to the form.</p> <p>2 Are you talking about a construction permit</p> <p>3 application for transfer or something else?</p> <p>4 MR. O'REAR: Was not really limited to that.</p> <p>5 I said a license which would include construction</p> <p>6 permit.</p> <p>7 THE WITNESS: You know, quite honestly I'm</p> <p>8 not sure I focused on who has actually made the</p> <p>9 application. It's been more the focus and my</p> <p>10 recollection is more about, you know, the process of</p> <p>11 transfer or the need to have this authorization for</p> <p>12 the transfer.</p> <p>13 BY MR. O'REAR:</p> <p>14 Q. Were you aware of the fact in this case</p> <p>15 whereby TVA refused to be the applicant for the</p> <p>16 transfer of the license at the request of Nuclear</p> <p>17 Development?</p> <p>18 A. I have seen some of the e-mails which have</p> <p>19 been offered as exhibits that seem to suggest that.</p> <p>20 Q. Are you aware of the facts in this case that</p> <p>21 TVA did not participate at all in the application</p>	<p style="text-align: right;">Page 303</p> <p>1 A. If you would hold on one second. I'm having</p> <p>2 trouble finding it.</p> <p>3 MR. LEMBKE: I don't see it because I have</p> <p>4 my notebook with a one on it, so let me pull it out.</p> <p>5 Okay. I've got it.</p> <p>6 BY MR. O'REAR:</p> <p>7 Q. Mr. Gleaves was the project manager on the</p> <p>8 Bellefonte -- the Bellefonte application for a period</p> <p>9 of time. Is that right?</p> <p>10 A. That's my understanding.</p> <p>11 Q. And this e-mail attaches a document that's</p> <p>12 titled: Procedures For Handling License Transfers.</p> <p>13 Effective date, June 15, 2017.</p> <p>14 A. Yes. June 5, 2017.</p> <p>15 Q. June 5. Sorry.</p> <p>16 And are you familiar with this document?</p> <p>17 A. I have some general familiarity with it.</p> <p>18 Q. Will you turn to Page -- it's Page 2 of the</p> <p>19 -- at the top, right-hand corner Page 2 of 14 of the</p> <p>20 procedures document.</p> <p>21 I'm directing you attention to Paragraph 4,</p>
<p style="text-align: right;">Page 302</p> <p>1 process?</p> <p>2 MR. LEMBKE: I'm going to object to that</p> <p>3 form for lack of foundation and misstates the evidence</p> <p>4 in the case.</p> <p>5 BY MR. O'REAR:</p> <p>6 Q. Are you aware of evidence in this case, Mr.</p> <p>7 Burns, that TVA refused or failed to participate in</p> <p>8 the application process?</p> <p>9 A. Again, I've seen some exhibits with respect</p> <p>10 to the interactions between Nuclear Development and</p> <p>11 TVA. I would be reluctant to -- I have no opinion on</p> <p>12 that and I would be reluctant to basically voice one</p> <p>13 about the relationship between the two entities.</p> <p>14 Q. If you would look at Exhibit 81, which</p> <p>15 should be near the bottom of the stack, if you can</p> <p>16 find it?</p> <p>17 A. Yeah, I have it.</p> <p>18 Q. And the cover page is an e-mail from Billy</p> <p>19 Gleaves of the NRC to Bill McCollum of Nuclear</p> <p>20 Development. Do you have see that, dated</p> <p>21 September 19, 2017?</p>	<p style="text-align: right;">Page 304</p> <p>1 captioned basic requirements?</p> <p>2 A. Yes.</p> <p>3 Q. Will you get to that page?</p> <p>4 A. Yes, basic requirements. Paragraph 4, yes.</p> <p>5 Q. So it says at the beginning, "Their license</p> <p>6 transfers are unique and they result in the exchange</p> <p>7 of ownership and/or responsibility for operating a</p> <p>8 nuclear facility."</p> <p>9 "Typically the exchange is orchestrated by a</p> <p>10 team of lawyers representing both the current and</p> <p>11 future owners." Do you see that?</p> <p>12 A. Yes, I do.</p> <p>13 Q. And while this is the directed to operating</p> <p>14 licenses, would it also apply to construction permits?</p> <p>15 A. I think the general -- general guidance --</p> <p>16 and again, this is primarily a guidance document</p> <p>17 issued to the staff. It may have relevance for those</p> <p>18 outside the Agency, but I think directed to the staff.</p> <p>19 But I would agree that it has some meaning</p> <p>20 in terms of transfer of licenses or construction</p> <p>21 permit.</p>

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<p style="text-align: right;">Page 305</p> <p>1 Q. And it states in Paragraph 2 under Section</p> <p>2 4, "The legal staff of OGC will be involved throughout</p> <p>3 the processing of the application. Frequent</p> <p>4 communications between the OGC and legal staff of the</p> <p>5 current and/or future owners will occur." Do you see</p> <p>6 that?</p> <p>7 A. Yes.</p> <p>8 Q. And when you were in the Office of General</p> <p>9 Counsel, was it the typical situation that both the</p> <p>10 attorneys for the licensee and the perspective</p> <p>11 licensee would work together in communicating whatever</p> <p>12 was needed by the NRC to process the application?</p> <p>13 A. I would say that, you know, we would have</p> <p>14 frequent contact and probably from both parties who</p> <p>15 are engaging.</p> <p>16 One of the -- one of the exceptions might</p> <p>17 well be some of those instances where a licensee was</p> <p>18 going into bankruptcy and reorganizing, so you'd have</p> <p>19 the trustee in bankruptcy who you interacted with</p> <p>20 rather than sort of counsel for the entity that was</p> <p>21 being reformed or reformulated.</p>	<p style="text-align: right;">Page 307</p> <p>1 technical staff who issues the transfer order.</p> <p>2 BY MR. O'REAR:</p> <p>3 Q. What do you recall about Mr. Chandler's</p> <p>4 contact with the OGC staff?</p> <p>5 A. I think Mr. Chandler was exploring the</p> <p>6 question about a transfer of the site prior to</p> <p>7 transfer of the permit. That's what I recall.</p> <p>8 Q. And how did you learn about that?</p> <p>9 A. I read it in his deposition.</p> <p>10 Q. Okay. You didn't know about it while you</p> <p>11 were at NRC?</p> <p>12 A. Oh, no. Not at all.</p> <p>13 Q. So what you know would be whatever is</p> <p>14 present in his deposition. Is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Let's look at Exhibit 14.</p> <p>17 A. What is it?</p> <p>18 Q. Fourteen is an e-mail from Chris Chandler to</p> <p>19 Tim Matthews, dated October 18, 2018. It's got an</p> <p>20 exhibit sticker on it marked 14.</p> <p>21 (Burns Exhibit No. 14 was marked for</p>
<p style="text-align: right;">Page 306</p> <p>1 Q. Are you aware with respect to the facts of</p> <p>2 this case whether or not TVA had any frequent</p> <p>3 communication with the NRC staff regarding the Nuclear</p> <p>4 Development application?</p> <p>5 A. I don't have any knowledge of the frequency.</p> <p>6 Q. If TVA was not frequently involved in any</p> <p>7 communications regarding that application, would it</p> <p>8 strike you as unusual or out of the ordinary?</p> <p>9 A. I --</p> <p>10 MR. LEMBKE: I object to the form, lack of</p> <p>11 foundation.</p> <p>12 You can go ahead, Mr. Burns.</p> <p>13 THE WITNESS: I would expect some contact.</p> <p>14 And I do recall -- again, I just don't -- I don't have</p> <p>15 a particular awareness here.</p> <p>16 I do have recollection that Mr. Chandler</p> <p>17 spoke to a number of OGC staff at some point. But you</p> <p>18 know, I just don't have it, any particular</p> <p>19 understanding of what actually happened here.</p> <p>20 I would expect both sides to have some</p> <p>21 communication with the legal staff and eventually the</p>	<p style="text-align: right;">Page 308</p> <p>1 identification.)</p> <p>2 MR. LEMBKE: I don't think that's in my</p> <p>3 stack.</p> <p>4 MR. O'REAR: Okay. Well, I'm not going to</p> <p>5 -- I didn't send it? I thought I did.</p> <p>6 Anyone have it?</p> <p>7 MR. LEMBKE: I think Mr. Burns and I are the</p> <p>8 only ones who got it sent. Well, maybe Larry has it.</p> <p>9 THE WITNESS: I'm not seeing it.</p> <p>10 MR. O'REAR: Well, the witness is the</p> <p>11 important one.</p> <p>12 MR. BLUST: Well, to whom was it?</p> <p>13 MR. O'REAR: It's from Chris Chandler to Tim</p> <p>14 Matthews, copied to Joe Shea.</p> <p>15 THE WITNESS: I'm sorry. I'm not seeing it.</p> <p>16 MR. O'REAR: All right.</p> <p>17 BY MR. O'REAR:</p> <p>18 Q. Let me pose a hypothetical to you since you</p> <p>19 don't have the actual document.</p> <p>20 Would it strike you as unusual if Nuclear</p> <p>21 Development sent a letter to TVA which proposed that</p>

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<p style="text-align: right;">Page 309</p> <p>1 TVA would sign such letter to the NRC, stating that</p> <p>2 TVA consents to the requested transfer of the two</p> <p>3 construction permits. Would it strike you as unusual</p> <p>4 if that was done, that TVA would not sign and submit</p> <p>5 such a letter to the NRC?</p> <p>6 MR. LEMBKE: Object to the form as to the</p> <p>7 vagueness of "unusual."</p> <p>8 THE WITNESS: I guess my answer would be I</p> <p>9 think it depends on other circumstances there.</p> <p>10 I would expect some communication in</p> <p>11 general. But, you know, context, I have to understand</p> <p>12 more in terms of context and the necessity under the</p> <p>13 circumstances.</p> <p>14 BY MR. O'REAR:</p> <p>15 Q. When you said you would expect more</p> <p>16 communication in general, were you referring to</p> <p>17 communication from counsel for the licensee?</p> <p>18 A. I think I'm talking in effect, both -- both</p> <p>19 parties, so the communications between them with</p> <p>20 respect to something like that.</p> <p>21 Q. All right. I've got I believe two more</p>	<p style="text-align: right;">Page 311</p> <p>1 2015?</p> <p>2 A. Yes, those are my mine.</p> <p>3 That's the prepared copy of my remarks.</p> <p>4 Q. Were these remarks you in fact gave, since</p> <p>5 they were published on the NRC website?</p> <p>6 A. Yes. I mean it's the formal -- it's not a</p> <p>7 transcript but it's the formal copy. When I actually</p> <p>8 gave it, I may have, you know, digressed here and</p> <p>9 there but not significantly.</p> <p>10 Q. Look on Page 4 of that speech. There's a</p> <p>11 section referring to the decommissioning proposal</p> <p>12 you're making?</p> <p>13 A. Right.</p> <p>14 Q. See that? And this is at a time when it had</p> <p>15 just come, the proposal had just come out. Is that</p> <p>16 correct?</p> <p>17 A. I think that --</p> <p>18 Q. Excuse me. It's at a time when the</p> <p>19 Commission directed the staff to begin work on a</p> <p>20 proposed rule?</p> <p>21 A. Yeah, that's more accurate. Because I don't</p>
<p style="text-align: right;">Page 310</p> <p>1 exhibits. We're close to the end here.</p> <p>2 There are two speeches in there that you</p> <p>3 made that were published on the NRC website?</p> <p>4 A. Okay.</p> <p>5 Q. Do you see them?</p> <p>6 A. Yes, I do.</p> <p>7 Q. Okay. And let's mark the one dated April</p> <p>8 30th, 2015 as Exhibit 210, I believe unless I miss</p> <p>9 counted.</p> <p>10 MR. O'REAR: Is that the next number, Mr.</p> <p>11 Court Reporter?</p> <p>12 THE COURT REPORTER: Let me check it.</p> <p>13 (Burns Exhibit No. 210 was marked for</p> <p>14 identification.)</p> <p>15 BY MR. O'REAR:</p> <p>16 Q. Have you marked that, Mr. Burns?</p> <p>17 A. 210, yeah, the one to the USEA.</p> <p>18 Q. Right. This one will just take a minute.</p> <p>19 If you look on Page 4 of that speech -- and</p> <p>20 can you identify Exhibit 210 as your prepared remarks</p> <p>21 to the U.S. Energy Association meeting April 30th,</p>	<p style="text-align: right;">Page 312</p> <p>1 think the proposed rule actually got up to the</p> <p>2 Commission until 2018.</p> <p>3 Q. In your speech you said that this proposed</p> <p>4 rule was to, "Increase the efficiency and</p> <p>5 predictability of the NRC's regulatory program." Do</p> <p>6 you see that in the second paragraph?</p> <p>7 A. Second paragraph? Yes, I do.</p> <p>8 Q. And so again, this proposed rule in your</p> <p>9 view was a good thing that would increase efficiency</p> <p>10 and predictability, right?</p> <p>11 A. Yeah. The effort to put together a rule was</p> <p>12 in my view at that time a good -- a way we should be</p> <p>13 going as an Agency to deal with some of the issues</p> <p>14 that are frequently described there.</p> <p>15 Q. Let's move to the next exhibit, which is the</p> <p>16 speech on March 8th, 2016 that I would like marked as</p> <p>17 Exhibit 211.</p> <p>18 (Burns Exhibit No. 211 was marked for</p> <p>19 identification.)</p> <p>20 BY MR. O'REAR:</p> <p>21 Q. And are you familiar with this speech?</p>

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<p style="text-align: right;">Page 313</p> <p>1 A. Yes, I am.</p> <p>2 Q. And so, these remarks are consistent with</p> <p>3 the remarks you actually made at the meeting?</p> <p>4 A. Yes.</p> <p>5 Q. Whatever meeting this was. Tell us what</p> <p>6 meeting this was?</p> <p>7 A. This was at the NRC's annual regulatory</p> <p>8 information conference. It's basically a conference</p> <p>9 sponsored by the Agency once a year. Didn't happen</p> <p>10 this year because of COVID-19.</p> <p>11 But -- and you get a lot of attendance from</p> <p>12 both the industry, NGOs, other people added. In many</p> <p>13 ways it's considered probably next to the IAEA general</p> <p>14 conference in Vienna, probably the most significant</p> <p>15 annual conference on nuclear regulations.</p> <p>16 Q. Let me ask you to look at Page 2 of the</p> <p>17 exhibit. I want to ask you about some of your</p> <p>18 comments in the speech. I'm going not going to ask</p> <p>19 you about everything.</p> <p>20 The first one I want to ask you about is the</p> <p>21 paragraph about two-thirds of the way down the page</p>	<p style="text-align: right;">Page 315</p> <p>1 to guard against making decisions in isolation. Is</p> <p>2 that correct?</p> <p>3 A. That's correct. That's what I said. Those</p> <p>4 are the general principles. I have applications to</p> <p>5 specific situations.</p> <p>6 Q. And so in the context of the NRC making a</p> <p>7 decision regarding Nuclear Development, you believe it</p> <p>8 would be appropriate to consider the real life and</p> <p>9 actual operating experience and weigh public and</p> <p>10 stakeholder input. Is that correct?</p> <p>11 MR. LEMBKE: I want to object based on</p> <p>12 assuming facts not in evidence. I was unaware that</p> <p>13 Nuclear Development -- they ever operated anything.</p> <p>14 BY MR. O'REAR:</p> <p>15 Q. Would that be a fair statement?</p> <p>16 MR. LEMBKE: Same objection. And I want to</p> <p>17 object on the basis of vagueness. What action are you</p> <p>18 talking about? When you're talking about the action</p> <p>19 on --</p> <p>20 MR. O'REAR: I'm talking about principles</p> <p>21 that he believes Nuclear Development -- excuse me, NRC</p>
<p style="text-align: right;">Page 314</p> <p>1 which starts, adequate protection?</p> <p>2 A. Yes.</p> <p>3 Q. Let me just read that. "Adequate</p> <p>4 protection' is a difficult phrase to explain to lay</p> <p>5 audiences, when adequate in the usual vernacular</p> <p>6 signifies just okay. For us of course it means the</p> <p>7 Commission must consistently and over time use its</p> <p>8 broad discretion to impose requirements it believes</p> <p>9 meets this mandate. It can be neither too lax nor too</p> <p>10 strict. And we must not conduct our decision making</p> <p>11 in a vacuum. We must consider real life and actual</p> <p>12 operating experience. And we must weigh public and</p> <p>13 stakeholder input to guard against making decisions in</p> <p>14 isolation." Do you see that?</p> <p>15 A. Yes, I do. Yes. I lost track.</p> <p>16 Q. And did that state principles that you</p> <p>17 believe should be followed by the NRC?</p> <p>18 A. Yes. It reflects my approach to regulation.</p> <p>19 Q. And you believe that you should in the</p> <p>20 regulation consider real life and actual operating</p> <p>21 experience and weigh the public and stakeholder input</p>	<p style="text-align: right;">Page 316</p> <p>1 should apply towards Nuclear Development's</p> <p>2 application.</p> <p>3 BY MR. O'REAR:</p> <p>4 Q. Do those principles include what you stated</p> <p>5 in this speech in what I read, the part that I just</p> <p>6 read?</p> <p>7 A. I agree with the principles that I espoused</p> <p>8 and described in the speech. Again, they're</p> <p>9 principles I think ought to be followed and some of</p> <p>10 that is related to the consistency of application of</p> <p>11 NRC requirements as well as decision making that is</p> <p>12 apparent.</p> <p>13 And yes, this is a general statement, sort</p> <p>14 of like an overarching principle.</p> <p>15 Q. And then if you would turn to Page 3 --</p> <p>16 well, at the bottom of Page 2 you say that you talked</p> <p>17 a bit about your regulatory philosophy --</p> <p>18 A. Right.</p> <p>19 Q. -- in the speech you gave last year. Do you</p> <p>20 see that?</p> <p>21 A. Yes.</p>

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<p style="text-align: right;">Page 317</p> <p>1 Q. And then at the top of Page 3, you're</p> <p>2 talking about your regulatory philosophy. Is that</p> <p>3 right?</p> <p>4 A. Yes.</p> <p>5 Q. And you said, "Along those lines I believe I</p> <p>6 am independent in my thinking and philosophy. I don't</p> <p>7 adhere to a rigid ideology that compels a certain</p> <p>8 outcome each time. So I believe I'm predictable in my</p> <p>9 approach of evaluating each matter on a case by case</p> <p>10 basis and applying rules deliberately and consistently</p> <p>11 across the board." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And so that's an important principle for you</p> <p>14 in your regulatory philosophy. Is that right?</p> <p>15 A. Correct.</p> <p>16 Q. Thank you. You said next paragraph, "I am</p> <p>17 also independent in that I'm open to new ideas and</p> <p>18 solutions that others may offer. I listen open</p> <p>19 mindedly to all stakeholders without becoming beholden</p> <p>20 to just one point of view. I believe problems must be</p> <p>21 clearly defined and I think there's rarely only one</p>	<p style="text-align: right;">Page 319</p> <p>1 Q. TVA?</p> <p>2 A. TVA is one.</p> <p>3 Q. Would you consider that NRC to be a</p> <p>4 stakeholder?</p> <p>5 A. The NRC is basically the decisionmaker. And</p> <p>6 usually you think of stakeholders as those with an</p> <p>7 input, but those who are being affected by the Agency.</p> <p>8 Q. Would you consider the public to be a</p> <p>9 stakeholder with respect to Bellefonte?</p> <p>10 A. Yes.</p> <p>11 Q. All right. Then --</p> <p>12 MR. LEMBKE: Mr. O'Rear, we're now</p> <p>13 seven hours and one-minute according to the court</p> <p>14 reporter's calculation. So we'll need to be wrapping</p> <p>15 it up.</p> <p>16 MR. O'REAR: Yeah, we're wrapping up.</p> <p>17 BY MR. O'REAR:</p> <p>18 Q. Well, let me direct you to Page 5 of this</p> <p>19 speech.</p> <p>20 A. Okay.</p> <p>21 Q. Would you look at the sentence</p>
<p style="text-align: right;">Page 318</p> <p>1 solution to a problem, nor do believe the NRC has --</p> <p>2 always has the right answer to any given problem."</p> <p>3 Were those true statements, that was your</p> <p>4 regulatory philosophy?</p> <p>5 A. That's my approach. And probably the best</p> <p>6 example is given in the next few paragraphs with</p> <p>7 respect to the NRC's treatment of flex equipment in</p> <p>8 the post Fukushima era.</p> <p>9 Q. Well, before you describe that, you say in</p> <p>10 the next sentence, "In my experience, oftentimes the</p> <p>11 best decision, the consensus based solution is reached</p> <p>12 through meaningful dialogue and all affected</p> <p>13 stakeholders." Right?</p> <p>14 A. Yes, it is says that.</p> <p>15 Q. And the stakeholders in this case would</p> <p>16 include Nuclear Development, right?</p> <p>17 A. In what case?</p> <p>18 Q. In this lawsuit, in this case that we're</p> <p>19 here about, the stakeholders include Nuclear</p> <p>20 Development?</p> <p>21 A. Correct, Nuclear Development.</p>	<p style="text-align: right;">Page 320</p> <p>1 three-quarters of the way down beginning "but I</p> <p>2 argue?"</p> <p>3 A. Yeah, yeah. I'm there.</p> <p>4 Q. It says, "But I argue that the regulator</p> <p>5 needs to contemplate for -- "the sweet spot" between</p> <p>6 under-regulation and over-regulation pursue effective</p> <p>7 regulation without imposing undue burden and stifling</p> <p>8 innovation." Do you see that?</p> <p>9 A. Yes, I do.</p> <p>10 Q. And do you believe that is a proper</p> <p>11 regulatory approach?</p> <p>12 A. Yes, I do.</p> <p>13 Q. And so, tell me if you believe these</p> <p>14 principles should be applied by the NRC in its</p> <p>15 regulatory function.</p> <p>16 Do you think fairness should be a</p> <p>17 consideration?</p> <p>18 A. Fairness is a consideration. And actually</p> <p>19 what I would say, is the NRC reflects a number of</p> <p>20 these concepts or ideas in what is called the</p> <p>21 principles of good regulation, which is obviously</p>

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1 early 1990s.

2 Q. Did those principles include practicality?

3 A. I don't recall if practicality is there but

4 it's, you know, things like consistence with

5 transparency, you know, achieving a regulatory

6 objective, those types of things.

7 Q. But fairness is certainly one of them?

8 A. Yes, absolutely, fairness. Because if you

9 aren't fair, you're subjected to potential appeals in

10 the court of appeals.

11 Q. Do you have an opinion as to whether under

12 the circumstances of this case where this plant is

13 presently inoperable, that the -- whether the transfer

14 of the site to Nuclear Development before the

15 construction permits are transferred poses an undue

16 risk to the safety and wellbeing of the public?

17 MR. LEMBKE: Objection, asked and answered.

18 We went over that earlier. We are over time and we

19 shouldn't be going back over things you've already

20 asked.

21 MR. O'REAR: I'm not sure I asked it exactly

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1 that way.

2 MR. LEMBKE: It was subtly identical.

3 MR. O'REAR: Okay. Well, he could have

4 answered more quickly than your objection.

5 MR. LEMBKE: I'm just saying I think it's

6 time to call time on this. We're now, beyond

7 seven hours.

8 BY MR. O'REAR:

9 Q. Well, do you believe there is any --

10 MR. LEMBKE: Mr. O'Rear, you're beyond your

11 time limit.

12 MR. O'REAR: Well, okay. I've got two more

13 questions.

14 MR. LEMBKE: All right. Two.

15 BY MR. O'REAR:

16 Q. One question. Mr. Burns, if the NRC

17 approves the application submitted by Nuclear

18 Development's transfer of the construction permit, do

19 you see any impediment or problem for TVA to convey

20 the site to Nuclear Development?

21 MR. LEMBKE: Object to the form, lack of

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1 foundation and vague as to what "impediment" is.

2 THE WITNESS: So the question, if NRC

3 approves the application for transfer?

4 Well, with respect -- if it approves the

5 application of transfer my focus has been on the

6 regulatory process. And from my standpoint, the

7 approval of a transfer is what is necessary in order

8 to allow conveyance of, you know, the property

9 interest on the site. So that's, you know, basically

10 I will stop there. You know, I recognize there may be

11 other disputes between the parties but that's not what

12 I was asked to provide an opinion on.

13 MR. O'REAR: Okay. That's all I have.

14 Thank you for your time. I know it's been a long day.

15 MR. LEMBKE: Let's take a five minute break.

16 I'll have some questions.

17 (Whereupon, a recess ensued.)

18 MR. LEMBKE: Back on the record.

19 EXAMINATION:

20 BY MR. LEMBKE:

21 Q. Mr. Burns, I have a few follow up questions

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1 for you.

2 First, there's been -- you were asked a lot

3 of questions today about the definition of a

4 utilization facility. Does the definition of

5 utilization facility factor in at all to your opinion

6 concerning whether there'd be a permit violation if

7 TVA had transferred the site to Nuclear Development

8 before approval of the construction permit transfer?

9 A. Yes, it does.

10 Q. And how so?

11 A. Well, the thing we've been talking about is

12 it's obvious that this is not a facility that is ready

13 as we say to turn the switch and put into operation.

14 But the framework, what I've been trying to

15 emphasize here is that the framework for regulation

16 that extends back decades wants -- has the NRC or its

17 predecessor the AEC -- it wants to assure that it has

18 the oversight and control of a site at which a plant

19 is being constructed and moving towards that type of

20 operation.

21 So, that's when I talk about the NRC not

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<p style="text-align: right;">Page 325</p> <p>1 wanting to bifurcate its jurisdiction or sort of the</p> <p>2 patch do -- sort of patchwork oversight.</p> <p>3 That's what I'm talking about, and I think</p> <p>4 that where also the decision in Marble Hill and Mr.</p> <p>5 Case's 2206 decisions address.</p> <p>6 Again, what you have is -- is ultimately if</p> <p>7 you're going to build that utilization facility, if</p> <p>8 you're going to operate a utilization facility on the</p> <p>9 site, you have the imprint of the NRC all the way</p> <p>10 along.</p> <p>11 And dividing that or separating it out is</p> <p>12 just not something in my experience and understanding,</p> <p>13 Agency practice and precedent, that has been done.</p> <p>14 Q. In terms of, you know, Exhibit 199 in your</p> <p>15 report with respect to your opinion reflected in --</p> <p>16 I'm trying to find where you talk about the actual</p> <p>17 permit language. Paragraph 23.</p> <p>18 A. Twenty-three?</p> <p>19 Q. Yes.</p> <p>20 A. Okay.</p> <p>21 Q. And --</p>	<p style="text-align: right;">Page 327</p> <p>1 takes some time before that -- you're able to be to</p> <p>2 the point to turn on the switch.</p> <p>3 BY MR. LEMBKE:</p> <p>4 Q. All right. And if you look at the last</p> <p>5 sentence of Paragraph 23 -- and I know you reference</p> <p>6 elsewhere that the permit authorizes to construct a</p> <p>7 utilization facility. That's what you're referring</p> <p>8 to, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And then the statement in the permit that</p> <p>11 the facilities would be located at on the applicant's</p> <p>12 site, that's not tied in any way to the utilization</p> <p>13 facility definition, correct?</p> <p>14 MR. O'REAR: Objection, leading.</p> <p>15 BY MR. LEMBKE:</p> <p>16 Q. How, if at all, is the definition of</p> <p>17 utilization facility impacted on the phrase "will be</p> <p>18 located on the applicant's site?"</p> <p>19 MR. O'REAR: Same objection.</p> <p>20 THE WITNESS: Well, I don't think it -- it's</p> <p>21 not so much here that's a utilization facility. It's</p>
<p style="text-align: right;">Page 326</p> <p>1 A. I'm sorry. Go ahead.</p> <p>2 Q. Does the definition of utilization facility</p> <p>3 have any bearing on whether the terms of the these</p> <p>4 permit terms that you're referencing were complied</p> <p>5 with?</p> <p>6 MR. O'REAR: Objection, asked and answered.</p> <p>7 THE WITNESS: Yes, in my view they do. And</p> <p>8 again, because the context we have here is we have a</p> <p>9 site for which there is a valid construction permit</p> <p>10 and the intention is to transfer that permit, and the</p> <p>11 intention is to continue work on that facility until</p> <p>12 it became an operational facility.</p> <p>13 So in that -- in that context, that's why</p> <p>14 it's significant. And that's why, I think going back</p> <p>15 to the Marble Hill, the Marble Hill precedent has</p> <p>16 bearing here. Because it reflects the intention of</p> <p>17 the NRC to explore that it has the regulatory</p> <p>18 oversight and imprint on the activities that may be</p> <p>19 constructed -- they occur under construction.</p> <p>20 And that's why it's treated for those</p> <p>21 purposes as a utilization facility. Recognizing it</p>	<p style="text-align: right;">Page 328</p> <p>1 what, you know, where the facility can be built. And</p> <p>2 it also in my view, because there are aspects which</p> <p>3 related -- which, for example, referenced here, the</p> <p>4 part 100 exclusion area considerations. The idea that</p> <p>5 it is a site owned by a named person or a named</p> <p>6 entity, I think that that is significant. And it is</p> <p>7 part in my view, part of the construction --</p> <p>8 BY MR. LEMBKE:</p> <p>9 Q. And same question as to phrase "shall be</p> <p>10 constructed and located at the site described in the</p> <p>11 application of Jackson County, Alabama, how if at all</p> <p>12 does the definition of utilization facility affect</p> <p>13 that particular requirement?</p> <p>14 A. Again, what it says is you can only proceed</p> <p>15 with a utilization facility at that site.</p> <p>16 And that's the stricture, that's the</p> <p>17 restriction that the NRC or here, the AEC, has imposed</p> <p>18 on it.</p> <p>19 Q. All right. Earlier today, Mr. Burns, you</p> <p>20 were asked questions about when a site becomes a</p> <p>21 utilization facility. Do you recall that?</p>

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1 A. Yes.

2 Q. And have you ever known the NRC to make a

3 decision on the precise point at which a site becomes

4 a utilization facility?

5 A. I'm not area of a particular decision --

6 particular decision that says you must have done this

7 much to do that.

8 I think it's more in concert with the

9 concepts reflected in the Marble Hill and the Case

10 letter.

11 Q. All right. Are you aware of any situation

12 where the NRC has suggested that a facility that has

13 not been -- for which a permit has not been withdrawn

14 or the party holding the permit has sought for it to

15 be withdrawn when it's as far long as either of the

16 Bellefonte units were along, are you aware of the NRC

17 ever having suggested that that's not a utilization

18 facility?

19 A. No.

20 Q. Now, let me get you to look at Exhibit 205,

21 which you were questioned about earlier, which is 10

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1 CFR 50.5.

2 A. Hold on. I got it.

3 MR. O'REAR: Which one?

4 MR. LEMBKE: 255.

5 BY MR. LEMBKE:

6 Q. Does anything -- what, if anything, in 10

7 CFR Section 50.5 would impose requirements on Nuclear

8 Development for their activities on the site after

9 they assumed ownership of it?

10 A. It doesn't directly impose a new requirement

11 on a licensee. So it wouldn't in this circumstance.

12 It reflects false -- making a false statement and

13 deliberate violations of the terms of the permit

14 holder regulations.

15 Q. Earlier you talked about the PSAR with Mr.

16 O'Rear. Do you recall that?

17 A. Yes.

18 Q. Is the PSAR a part of the application for a

19 construction permit?

20 A. Yes, it is.

21 Q. Are you aware in conjunction with Nuclear

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1 Development's application for a construction permit

2 transfer, are you aware of any promise they made

3 concerning the recordkeeping, maintenance or security

4 requirements of the site?

5 A. No, I'm not aware.

6 Q. If you look at Exhibit 124, which is Mr.

7 Case's letter to Dr. Asperger --

8 A. Hold on. I got it. Yes, I've got it.

9 Q. Am I right that this is a letter pertaining

10 to the Enrico Fermi Atomic Power Plant Unit Two?

11 A. Yes, I believe it is.

12 Q. And on March 3rd, 1978, do you know if the

13 Fermi plant Unit Two was capable of sustaining nuclear

14 fission in a self-supporting chain reaction?

15 A. I do not believe it was.

16 Q. And what familiarity do you have with that

17 Fermi Unit Two plant?

18 A. Well, my familiarity is that I went to -- I

19 actually visited that plant. I think it started up or

20 went critical in the mid 1980's, and I was involved in

21 some -- I think was some enforcement action with

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1 potentially -- it was petition related to Fermi in the

2 mid '80s. And so, I went out there just prior or it

3 could have been after it had gone critical. So again,

4 my recollection was that didn't happen until 1985.

5 Q. And when you say go critical, what do you

6 mean?

7 A. Well, that means they basically sustained a

8 nuclear reaction in the reactor.

9 Q. Okay. Mr. Burns, what is the difference

10 between a construction permit being transferred to

11 another party versus a construction permit being

12 withdrawn from the NRC's perspective?

13 MR. O'REAR: Objection, vague, overbroad,

14 without any specificity.

15 THE WITNESS: Well, with respect -- I'll

16 start with one being withdrawn.

17 When we talk about a construction permit

18 being withdrawn, that's the circumstance in which we

19 understand that the license holder, or the

20 construction -- the construction permit has decided to

21 abandon the project and we'll in effect withdraw the

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<p style="text-align: right;">Page 333</p> <p>1 permit. In other words, turn them back into the NRC.</p> <p>2 And that's a circumstance we discussed today</p> <p>3 in the Fermi project where basically Cincinnati Gas</p> <p>4 and Electric decided it would not, you know, cross the</p> <p>5 finish line with respect to Zinner, so it wanted to</p> <p>6 pull back. It decided to turn in the construction</p> <p>7 permit.</p> <p>8 So the significance in that circumstance,</p> <p>9 again, is what the interest -- the NRC interested in</p> <p>10 it is saying, okay, fine, you're turning in the</p> <p>11 construction permit. You're getting out of this</p> <p>12 business, so to speak. But we to be assured that what</p> <p>13 is left behind is not capable of being put into</p> <p>14 operation.</p> <p>15 So all of this discussion, for example, on</p> <p>16 an operable or utilization facility or one being</p> <p>17 capable of operation is going to that basically,</p> <p>18 decision. It says is this a facility from the NRC's</p> <p>19 standpoint that we can basically say, you're fine,</p> <p>20 you've abandoned it. Go forward. Do whatever else</p> <p>21 you want with respect to the site. But, we no longer</p>	<p style="text-align: right;">Page 335</p> <p>1 and over the facility or the site where the activity</p> <p>2 is subject to licensing, even if they're in hiatus</p> <p>3 would be conducted. And which the future -- which the</p> <p>4 transferee would intend to carry out.</p> <p>5 So that's the significant difference, I</p> <p>6 think, when we focus on the withdrawn license and one</p> <p>7 that, for example, might be terminated but -- or in</p> <p>8 deferred status but basically the candle hasn't been</p> <p>9 blown out. There is still a potential future for that</p> <p>10 facility.</p> <p>11 Q. And are you aware of any circumstance where</p> <p>12 there has been a transfer of ownership of a</p> <p>13 non-withdrawn -- well, let me start over.</p> <p>14 Are you aware of any circumstance where</p> <p>15 there's been a transfer of ownership of a plant</p> <p>16 subject to a valid construction permit where the</p> <p>17 ownership was transferred before the NRC approved</p> <p>18 transfer of the construction permit?</p> <p>19 A. No, I'm not aware of such a situation.</p> <p>20 Q. Let me get you to pull Exhibit 207.</p> <p>21 A. What is that, again?</p>
<p style="text-align: right;">Page 334</p> <p>1 have a regulatory interest in it.</p> <p>2 So, again, when it's withdrawn, that's the</p> <p>3 scenario you're looking at going to.</p> <p>4 I think the deferred plan policy --</p> <p>5 BY MR. LEMBKE:</p> <p>6 Q. Let me ask you, how does it differ, than, if</p> <p>7 you have a request to transfer the construction</p> <p>8 permit?</p> <p>9 A. Well, a request for a transfer of the</p> <p>10 construction permit by implication tells me that the</p> <p>11 project is not over, that the transferee has an</p> <p>12 interest in continuing it and potentially continuing</p> <p>13 it to the point that it becomes a plant that needs an</p> <p>14 operating license.</p> <p>15 And so from that standpoint, the NRC has an</p> <p>16 ongoing interest -- again, like with any transfer of</p> <p>17 license, it has an interest in assuring that it is</p> <p>18 transferred from the existing entity to one that is</p> <p>19 qualified and meets the requirements of NRC licensing,</p> <p>20 and that basically it continues to have that what I</p> <p>21 call regulatory imprint or footprint over the activity</p>	<p style="text-align: right;">Page 336</p> <p>1 Q. This is the June 29, 2006 from TVA to the</p> <p>2 NRC.</p> <p>3 A. I'm sorry. I have June 29th?</p> <p>4 Q. The June 29, 2006 letter?</p> <p>5 A. I got it.</p> <p>6 Q. All right. I want to direct your attention</p> <p>7 on Page 1, and this is Exhibit 207, to the first</p> <p>8 sentence. Do you see where it says, "During a</p> <p>9 conference call with the NRC project manager on</p> <p>10 June 21, 2006, TVA was asked to provide additional</p> <p>11 information regarding whether the subject BLN unit can</p> <p>12 be considered a utilization facility as defined in 10</p> <p>13 CFR 50.2 as follows." Do you see that?</p> <p>14 A. Yes, I see that.</p> <p>15 Q. Do you know what was discussed during that</p> <p>16 conference call with the NRC project manager on</p> <p>17 June 21, 2006?</p> <p>18 A. No, I do not.</p> <p>19 Q. And you referred -- first of all, what is</p> <p>20 the difference between a terminated permit and a</p> <p>21 withdrawn permit?</p>

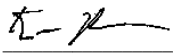
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<p style="text-align: right;">Page 337</p> <p>1 A. You mean terminated status or --</p> <p>2 Q. Within the meaning of the deferred plant</p> <p>3 policy, is there any difference between terminated</p> <p>4 versus withdrawn?</p> <p>5 A. Well, I think there's a distinction because</p> <p>6 with respect to the intention of going forward, as I</p> <p>7 mentioned a couple of minutes ago, withdrawn implies</p> <p>8 that it's going to go to the point that basically,</p> <p>9 it's done. It's we're seeking to release ourselves</p> <p>10 from NRC jurisdiction.</p> <p>11 So there is some concern at the NRC that if</p> <p>12 you're going to go to that, again, as in the Zimmer</p> <p>13 situation, you're looking at making sure that there is</p> <p>14 not the capability of simply making this into an</p> <p>15 operable utilization facility.</p> <p>16 And part of what the NRC's concern is that</p> <p>17 the permits basically stay in effect until the NRC</p> <p>18 releases control. That's what it -- withdrawn.</p> <p>19 For the terminated status, what you're</p> <p>20 basically doing, in some respects you could go down</p> <p>21 that path where they decide to basically withdraw in</p>	<p style="text-align: right;">Page 339</p> <p>1 handling license transfer document that you talked</p> <p>2 about with Mr. O'Rear, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And let me direct you, if you look in the</p> <p>5 bottom right, the Bates numbers to Page 3478.</p> <p>6 A. Yes.</p> <p>7 Q. And if you look at -- on Page 3478 under</p> <p>8 Basic Requirements, the first sentence that I think</p> <p>9 you looked at with Mr. O'Rear said, "License transfers</p> <p>10 are unique in that they result in the exchange of</p> <p>11 ownership and/or the responsibility for operating a</p> <p>12 nuclear facility." Do you see that?</p> <p>13 A. Yes, I do.</p> <p>14 Q. So is that indicating that the result of the</p> <p>15 license transfer is the exchange of ownership, right?</p> <p>16 MR. O'REAR: Objection, mischaracterizes or</p> <p>17 misstates the language. Also it's leading.</p> <p>18 BY MR. LEMBKE:</p> <p>19 Q. Mr. Burns, do you see that sentence?</p> <p>20 A. I see that sentence.</p> <p>21 Q. What, if anything, in that sentence</p>
<p style="text-align: right;">Page 338</p> <p>1 the permit. But the other option that it speaks to is</p> <p>2 this option of transferring it to a new owner who they</p> <p>3 pass it off to. And a new transferee, they proceed</p> <p>4 with the completion of the project, which of course</p> <p>5 would be subject to the NRC's jurisdiction.</p> <p>6 Q. You mentioned the Zimmer opinion. Do you</p> <p>7 regard the Zimmer opinion as in any way inconsistent</p> <p>8 with the opinions you're offering in this case?</p> <p>9 A. No, not at all because as I explained, I</p> <p>10 think a number of times today, it goes toward this</p> <p>11 question of -- this goes to the scenario of</p> <p>12 withdrawing as opposed to keeping alive.</p> <p>13 Q. Now, let me direct your attention to</p> <p>14 Exhibit 81, which the first page is an e-mail from Joe</p> <p>15 McCollum -- excuse me, from Billy Gleaves to Bill</p> <p>16 McCollum.</p> <p>17</p> <p>18 A. Okay. It's 81?</p> <p>19 Q. Yes, sir.</p> <p>20 A. I have it.</p> <p>21 Q. Attached to it is the procedures for</p>	<p style="text-align: right;">Page 340</p> <p>1 indicates that the exchange of ownership precedes the</p> <p>2 license transfer approval?</p> <p>3 A. I don't see anything in that that says so.</p> <p>4 Q. And then if you look at the next page which</p> <p>5 is Bates number 3479, upper right, it's Page 3, do you</p> <p>6 see the -- at the top of the page, the third line down</p> <p>7 says, "If the application is not being made by the</p> <p>8 current licensee." Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And so what, if any, indication is that</p> <p>11 whether it's mandatory that the current licensee</p> <p>12 participate in the application?</p> <p>13 A. It doesn't make it -- it doesn't make it</p> <p>14 mandatory. Again, this is an internal guidance</p> <p>15 document to the NRC staff.</p> <p>16 Q. Okay. And then Mr. O'Rear showed you in</p> <p>17 Exhibits 210 and 211 some passages from speeches you</p> <p>18 gave in 2015 and 2016 when you were the Chairman of</p> <p>19 the Nuclear Regulatory Commission. Do you recall</p> <p>20 that?</p> <p>21 A. Yes, I do.</p>

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<p style="text-align: right;">Page 341</p> <p>1 Q. Did you find anything that Mr. O'Rear</p> <p>2 pointed to you from those speeches as being</p> <p>3 inconsistent with the opinions you're offering in this</p> <p>4 case?</p> <p>5 A. No.</p> <p>6 Q. Why do you say that?</p> <p>7 A. Because what I tried to do in my view, my</p> <p>8 opinion is consistent with those principles because</p> <p>9 what it says is the NRC's normal regulatory framework</p> <p>10 should be carried out.</p> <p>11 Here, again, the NRC, I do not doubt the NRC</p> <p>12 needs to have communication with the applicant to ask</p> <p>13 the questions it needs to ask, to evaluate the</p> <p>14 answers. But I don't see anything in those speeches.</p> <p>15 What I'm saying in those speeches is the NRC needs to</p> <p>16 act as a consistent, reliable regulator and not act</p> <p>17 arbitrarily. And in my view acting in accordance with</p> <p>18 the longstanding practice that it's had and is the way</p> <p>19 to go and is perfectly consistent with those</p> <p>20 principles.</p> <p>21 Q. Mr. Burns, has anything that you heard today</p>	<p style="text-align: right;">Page 343</p> <p>1 different question?</p> <p>2 MR. O'REAR: You tell me what the question</p> <p>3 was. That's what I heard the question to be.</p> <p>4 MR. LEMBKE: The question was: Has the NRC</p> <p>5 ever determined when it's first the utilization</p> <p>6 facility?</p> <p>7 MR. O'REAR: When it's first a utilization</p> <p>8 facility. Okay.</p> <p>9 BY MR. O'REAR:</p> <p>10 Q. All right. Referring to the Zimmer case,</p> <p>11 Mr. Burns, the NRC has determined when a facility is</p> <p>12 not a utilization facility, hasn't it?</p> <p>13 MR. LEMBKE: Objection, asked and answered.</p> <p>14 MR. O'REAR: I'm following your question.</p> <p>15 BY MR. O'REAR:</p> <p>16 Q. It has determined when a facility is not a</p> <p>17 utilization facility. Is that correct?</p> <p>18 A. In the context of Zimmer?</p> <p>19 Q. Yes.</p> <p>20 A. Again, in the context of Zimmer and this</p> <p>21 goes to the circumstances we described, I think at</p>
<p style="text-align: right;">Page 342</p> <p>1 or any of the questions that have been asked or any of</p> <p>2 the documents you've seen caused you to reconsider or</p> <p>3 change any of the opinions you've expressed in your</p> <p>4 report and supplemental report?</p> <p>5 A. No.</p> <p>6 MR. LEMBKE: I don't have anything further.</p> <p>7 Thank you.</p> <p>8 MR. O'REAR: I've got a few follow ups for</p> <p>9 those questions. Won't take long at all.</p> <p>10 EXAMINATION:</p> <p>11 BY MR. O'REAR:</p> <p>12 Q. If I could get before you the Zimmer case</p> <p>13 that Mr. Lembke asked you about. This is Exhibit 132.</p> <p>14 A. I've got it.</p> <p>15 Q. I believe Mr. Lembke asked you whether the</p> <p>16 NRC's ever made a decision on when along the spectrum</p> <p>17 of construction the NRC determines that a facility is</p> <p>18 a utilization facility. I'm paraphrasing his question</p> <p>19 but do you recall that?</p> <p>20 MR. LEMBKE: Well, I object that it</p> <p>21 misstates the question. Why don't you read a</p>	<p style="text-align: right;">Page 344</p> <p>1 least in another plants, is it goes to the question of</p> <p>2 are we satisfied at NRC that the licensee, we can</p> <p>3 terminate the permit, the licensee can go away, no</p> <p>4 longer subject to NRC jurisdiction. And then we don't</p> <p>5 have any concern with respect to the state of the</p> <p>6 plant at the site. And that's what it's focused on,</p> <p>7 assuring that it's defeated from that. It's not in</p> <p>8 effect withdrawn status of the construction permit.</p> <p>9 Everybody's going away from the facility.</p> <p>10 And that's what I think the significance of the Zimmer</p> <p>11 case is. And it has to be understood in that context.</p> <p>12 It can't be re-quoting outside of that context with</p> <p>13 respect to what's said in the Zimmer opinion.</p> <p>14 Q. But the Zimmer case did say if you remove</p> <p>15 the nuclear fuel, if you sever and weld the caps on</p> <p>16 the two main feed water lines and the four main steam</p> <p>17 lines and if you remove the control rod drive</p> <p>18 mechanisms, then the facility is not a utilization</p> <p>19 facility?</p> <p>20 A. That has continued to be subject to NRC</p> <p>21 regulation.</p>

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<p style="text-align: right;">Page 345</p> <p>1 MR. LEMBKE: And I'm going to object, it</p> <p>2 misstates the exhibit.</p> <p>3 BY MR. O'REAR:</p> <p>4 Q. When Mr. Lembke asked you about the deferred</p> <p>5 plant policy, he asked you what distinction's drawn in</p> <p>6 that policy between a withdrawn application -- excuse</p> <p>7 me, a withdrawn construction permit and a terminated</p> <p>8 permit.</p> <p>9 Does the deferred plant policy statement in</p> <p>10 any way refer to a withdrawn permit?</p> <p>11 A. Yes, it does. I would say it does. It says</p> <p>12 in Section B on terminated plants, Section 1 it says</p> <p>13 in the event that withdrawal of CP is sought, the</p> <p>14 permit holder should supply notice to staff</p> <p>15 sufficiently far in advance of the expiration of the</p> <p>16 permit to -- for the staff the determine appropriate</p> <p>17 terms and conditions.</p> <p>18 Q. But --</p> <p>19 A. So it sounds like where the current holder</p> <p>20 is moving toward ending the project all together. It</p> <p>21 then has the language that allows for as I call it the</p>	<p style="text-align: right;">Page 347</p> <p>1 the operative provisions of the policy statement,</p> <p>2 which gives the context of what expectations are that</p> <p>3 the NRC might have and the guidance it's given to</p> <p>4 those who might want to take advantage of certain -- a</p> <p>5 different circumstance.</p> <p>6 MR. O'REAR: No further questions.</p> <p>7 MR. LEMBKE: Don't have anything further.</p> <p>8 Mr. Norris, we do want to read and sign.</p> <p>9 TVA and Nuclear Development want copies.</p> <p>10 (The deposition concluded at 6:57 p.m.)</p>
<p style="text-align: right;">Page 346</p> <p>1 scavenging of parts or transfer -- the discussion of</p> <p>2 transfer to a potential new owner.</p> <p>3 Q. But under the deferred plant policy, a</p> <p>4 deferred plant is a defined term, correct? Deferred</p> <p>5 plant status?</p> <p>6 A. Yes, a deferred plant is one that</p> <p>7 contemplated where they -- they talked about it, in</p> <p>8 terms of for purposes of the guidance as we discussed</p> <p>9 before as one basically where the option is being</p> <p>10 preserved.</p> <p>11 Q. But the policy defines deferred plant</p> <p>12 status, correct?</p> <p>13 A. It gives a definition of deferred plant,</p> <p>14 yes.</p> <p>15 Q. And it defines terminated plant, correct?</p> <p>16 A. Yes, it also gives a terminated plant.</p> <p>17 Q. It does not use the term "withdrawn plant,"</p> <p>18 does it?</p> <p>19 A. Well, not in the definitions. But what's</p> <p>20 operative in the policy is what the significance of</p> <p>21 what the holder of the permit may do. And I read from</p>	<p style="text-align: right;">Page 348</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2 State of Maryland</p> <p>3 County of Baltimore, to wit:</p> <p>4 I, KENNETH NORRIS, a Notary Public of</p> <p>5 the State of Maryland, County of Baltimore, do hereby</p> <p>6 certify that the within named witness personally</p> <p>7 appeared before me at the time and place herein set</p> <p>8 out, and after having been duly sworn by me, according</p> <p>9 to law, was examined.</p> <p>10 I further certify the examination was</p> <p>11 recorded stenographically by me and this transcript is</p> <p>12 a true record of the proceedings.</p> <p>13 I further certify that I am not of</p> <p>14 counsel to any of the parties, nor in any way</p> <p>15 interested in the outcome of this action.</p> <p>16 As witness my hand and notarial seal</p> <p>17 this 19th day of August, 2020. </p> <p>18</p> <p>19 KENNETH NORRIS</p> <p>20 Notary Republic</p> <p>21 My Commission Expires: 7-07-22</p>

STEPHEN G. BURNS
NUCLEAR DEVELOPMENT vs TENNESSEE VALLEY AUTHORITYAugust 19, 2020
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1 CERTIFICATE OF DEPONENT

2

3 I hereby certify that I have read and

4 examined the foregoing transcript, and the same is a

5 true and accurate record of the testimony given by me.

6

7 Any additions or corrections that I

8 feel are necessary, I will attach on a separate sheet

9 of paper to the original transcript.

10

11 _____

12 Stephen G. Burns

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1 Reference No.: 5882449

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SIGNATURE: _____ DATE: _____

25 Stephen G. Burns

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1 Reference No.: 5882449

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3 Case: NUCLEAR DEVELOPMENT vs TENNESSEE VALLEY AUTHORITY

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DECLARATION UNDER PENALTY OF PERJURY

5

6 I declare under penalty of perjury that

7 I have read the entire transcript of my Depo-

8 sition taken in the captioned matter or the

9 same has been read to me, and the same is

10 true and accurate, save and except for

11 changes and/or corrections, if any, as indi-

12 cated by me on the DEPOSITION ERRATA SHEET

13 hereof, with the understanding that I offer

14 these changes as if still under oath.

15

16 _____

17 Stephen G. Burns

18

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NOTARIZATION OF CHANGES
(If Required)

Subscribed and sworn to on the _____ day of _____, 20____ before me,

(Notary Sign) _____

(Print Name) _____ Notary Public,

in and for the State of _____

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1 Reference No.: 5882449

Case: NUCLEAR DEVELOPMENT vs TENNESSEE VALLEY AUTHORITY

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SIGNATURE: _____ DATE: _____

25 Stephen G. Burns